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THE

# SOLICITORS' JOURNAL

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## CURRENT TOPICS

### House Purchase and Improvements

MR. HENRY BROOKE'S surprise in his House Purchase and Housing Bill is happy. For many years past the attitude of local authorities to applications for improvement grants has been unpredictable; neighbouring authorities have adopted divergent policies; the grants themselves have been hedged with conditions and restrictions. The result has been a reluctance to apply with the consequent neglect of an important means of conserving dwellings. As public money is being spent it is not feasible to remove the conditions and restrictions, but the Bill's proposal to compel local authorities to make grants in respect of four specific improvements should remove much of the uncertainty. The four improvements are the provision of a bath, a hot water supply, a water closet and satisfactory food storage. The maximum grant will be £150 where all four improvements have to be made, and proportionately smaller grants will be made when fewer than the four are necessary. The grant is intended to cover half the cost of the improvement. The discretion of local authorities will remain unimpaired in relation to grants for purposes outside the basic four, except that they will have to give reasons for any refusal. There is no indication that a disappointed applicant, having been given the reason, can do anything about it. The period during which conditions must be observed is to be shortened and local authorities are to be given more discretion in fixing the rents of houses which are improved with the help of grants. Other provisions in the Bill include those to give trustee status to investments in certain building societies and to provide the societies with government money to lend on the security of pre-1919 houses valued at not more than £2,500.

### Legal Advice

THE *Law Society's Gazette* for December fills in some details in the Legal Advice Scheme. The LORD CHANCELLOR has been informed that the proposed Scheme has the support of the vast majority of the profession and the Council hope shortly to send to each solicitor in private practice an invitation to join the Legal Advice Panel. We are satisfied that the proposed statutory scheme will not throw an unreasonable clerical and administrative burden on solicitors and their staffs. In particular a solicitor will not be expected to verify an applicant's statement about his means, although we feel that some at least of the applicants will have to be helped to fill in the form. We think it is reasonable that there should be a maximum period of ninety minutes, costing £3, after which, if an applicant's difficulties are still

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unresolved, the authority of the Area Committee will be necessary. It is proper that an applicant should be confined to one solicitor, since otherwise an enterprising and athletic applicant with a bicycle could have the benefit of the advice of several solicitors in a single afternoon. Indeed he will be able to do so, but we assume that on his form he will have to say whether he has previously obtained advice on the same point, so that Nemesis will catch up with him in due course provided that he has given his correct name and address. We hope that the necessary legal preliminaries will go through with all speed and that the Lord Chancellor will then turn to civil proceedings before magistrates.

## "Contentious" and "Non-contentious" Business Distinguished

FOR purposes of solicitors' costs a most useful decision has recently been reported, namely, *Re Simpkin Marshall, Ltd.* [1958] 3 W.L.R. 693; p. 878, *ante*. In the course of his judgment, WYNN PARRY, J., said, at pp. 697–98: "There is now a clear and . . . logical division between contentious and non-contentious business. All business is now to be regarded as contentious which is done before proceedings are begun provided that the business is done with a view to the proceedings being begun, and they are in fact begun, and also all business done in the course of the proceedings. All other business is non-contentious." His lordship had been considering a case where, in the course of a compulsory winding up of a company, solicitors had been required by the liquidator to prepare cases for counsel to advise; and his remarks are relevant to the construction of s. 86 of the Solicitors Act, 1957.

## Mixed Purpose Bequests

THE recent decision in *Re Sahal's Will Trusts* [1958] 1 W.L.R. 1243; p. 877, *ante*, illustrates the pitfalls which may await executors of a would-be charitable testator. In that case the testator, *inter alia*, devised his dwelling-house to the Salford Corporation upon trust to use and maintain the same as a children's home; he further bequeathed to that corporation the sum of £2,000 on trust to invest the same as a fund and apply the annual income therefrom "for the benefit of such one or more of the children for the time being resident in the said house" at the corporation's discretion. The court upheld the gift of the dwelling-house for the purpose of founding a children's home by the corporation as a valid charitable gift, the children being a class of persons within the ambit of charity; however, DANCKWERTS, J., found himself bound to hold that the gift of the money was void for perpetuity by reason of the Court of Appeal's decision in *Re Cole* [1958] 3 W.L.R. 447; p. 618, *ante*, which he was unable to distinguish. His lordship stated that in the absence of that decision he would have found no difficulty in concluding that the gift of the house and the gift of the fund were both charitable. It is certainly desirable that when a principal bequest is upheld as charitable any further bequests which are in fact ancillary ones should also be regarded as valid. If no early occasion arises for the courts to propound such a doctrine it is to be hoped that Parliamentary action will be taken at the first opportunity.

## Interpreting for Deaf Mutes

A PERSON who is deaf and dumb may be called as a witness in legal proceedings if it is possible to make him understand the nature of an oath and he may give his evidence either by signs, in writing or through an interpreter. It is only where the court takes the view that he is unable to express himself intelligently and in such a manner as to be faithfully interpreted that the evidence of a deaf mute is necessarily excluded (see *R.* v. *Imrie* (1917), 12 Cr. App. R. 282). Not everyone, of course, has the ability to act as an interpreter and Mr. E. R. GUEST, the West London magistrate, was recently reported as saying that, so far as he could see, interpreting for the deaf was "a matter of no interest . . . to anybody." This remark drew a prompt and courteous response from Mr. EDWARD EVANS, the Chairman of the National Institute for the Deaf, and in a letter to *The Times* (5th December) he referred to the work of that large number of fully experienced and qualified persons who devote their lives to the service of the deaf and frequently appear in court as interpreters. In the main, they are attached to welfare societies which are established all over the country and the Home Office has given the addresses of these organisations to all the police authorities. This list contains the name of five centres in inner London which can be approached for this service, but Mr. Evans points out that if any difficulty should be experienced in obtaining the services of an interpreter the Institute would "in most cases expect to be able to supply an interpreter immediately." We are pleased to give this generous offer further publicity. The address of the Institute is 105 Gower Street, London, W.C.1.

## Defaming the Dead

THERE can be little doubt that, in English law, in order to maintain an action in respect of defamatory words published concerning a deceased person, his relatives must show that their own reputations, and not merely that of the deceased, have been damaged. Libel and slander are essentially personal wrongs and a right of action on either of these grounds dies with the person defamed. It can be said with certainty that an action for defamation does not survive for the benefit of the deceased's estate (s. 1 (1) of the Law Reform (Miscellaneous Provisions) Act, 1934) but the publication in question may be a criminal offence if the words are likely to provoke the members of the deceased's family to a breach of the peace (*R.* v. *Topham* (1791), 4 Term Rep. 126). In this respect the law would seem to be the same in Scotland (see *Broom* v. *Ritchie* (1904), 6F. 942 (Ct. of Sess.) and in other parts of the Commonwealth, but in New South Wales a Defamation Bill is now giving rise to heated controversy. The legislatures of Queensland, Tasmania and Western Australia have already enacted that a person can bring an action for a libel on a deceased member of his family if the words are likely to injure his own reputation or induce other persons to shun, avoid, ridicule or despise him but there are those who fear that the Government of New South Wales is about to go one stage further by providing that a person may sue for damages when a dead relative has been defamed by historians without showing injury to himself. However, it should be emphasised that the New South Wales Government maintains that the principal object of the Bill is merely to codify the existing law relating to defamation following the pattern of the Queensland code. The Bill is expected to become law next week.

## Correct Description for " Bubbly "

AFTER a six-day trial the Costa Brava Wine Company Limited was recently found not guilty of using a false trade description under the Merchandise Marks Acts, 1887 to 1953, by calling goods supplied or sold " Spanish Champagne." The prosecution had been brought by the Champagne Association of Britain and two French associations, whose case was that champagne meant a white sparkling wine coming only from the Champagne district of France ; wine from elsewhere could not be champagne and therefore to label a wine " Spanish Champagne," although it was produced in Spain, was false and misleading. The defence had pointed to the long-standing existence of South African sherry and Australian burgundy to show that no offence was committed by the production and marketing of the type of wine known as champagne on which the French had no patent. In his summing-up, MCNAIR, J., pointed out that many wines, such as sherry, burgundy, graves and sauterne, had lost the territorial origin of their names. The jury had to bear in mind the purpose of the Acts under which the case was brought, namely, to protect the interests of those with their own trade mark or trade name, and to protect the public against falsity or being misled, remembering that members of the public might have no technical knowledge. It is significant that the jury took only thirty-five minutes to reach their verdict. Since then a minor international incident has occurred when French customs officials on the Spanish border at La Junquera refused permission for the transit of 20,000 bottles of Spanish champagne to Britain. From this case the conclusion can be drawn that highly successful advertising may contain the seeds of its own downfall ; for if a non-protected brand name becomes such a household word as to amount to a generic description of the product so advertised, competitors will be able to use that name with appropriate additions to sell their own products.

## " THERE IS NOTHING NEW UNDER THE SUN "

ONCE upon a time many years ago—long before the patrolling policemen appeared to be so young—it is likely that quite a number of our readers tried their hands at writing an essay entitled the same as this article. What conclusions did they then reach ? What were then the newest developments which gave the lie to the above quotation ? How would they tackle the subject to-day ? What has come about in recent years which might be described as new ? Plastics, iron lungs, radar, clutchless cars, transistor radios, jet planes, synthetic textiles, antibiotics, television, dictaphones, vitamin pills, nuclear energy, atomic submarines, earth satellites, space rockets . . . but a word of caution here. If our phrase is strictly construed, space rockets and planetary vehicles may fall outside our terms of reference as potentially they could be *over* the sun.

Certainly the earth is becoming more mechanised and better equipped for probing the vastness of space and the minuteness of the atom. Yet an essential thread runs continuously from the earliest days of man down to the nuclear age of to-day. This is the human spirit which has been the motive power behind all progress, inquiring, ambitious, progressive, never satisfied, yet accompanied by often irrational but deep-seated emotions of love, hate, hope, fear, modesty, pride, meanness, generosity and charity. Yes, charity, one of the oldest virtues and closely connected with love—the love of one's fellow beings who by rare chance happen to inhabit this small speck in the universe for the same fleeting moment as oneself in an infinity of time. Helping others is a basic necessity much more satisfying than merely being helped. Those who contribute to good causes often obtain much greater mental satisfaction from their charitable actions than they gain from worldly success alone. Every little helps ; it is not only the coin given but the consequent spirit engendered which makes the world a better place. These days in many ways corporate enterprise is replacing individual enterprise ; the private benefactor and patron are on the decline. Both sources must be harnessed to work together, to produce the spiritual and material factors which, in combination, achieve effective results for charity.

There is always room for wise charitable gifts in spite of the Welfare State, National Health Service, pensions for all and the rest. The inevitable result of having adequate control upon expenditure of public funds is delay in the making of grants—often when speed in assistance is vital to ensure its effectiveness—and in priorities being allocated in accordance with the opinions of those in authority. In many cases private charity can act quicker and more effectively than the machinery of State, and can fill in inevitable gaps which may be left for years until sufficient public opinion has been mustered to instil a sense of urgency into authority, to enable funds to be made available and action taken.

In which direction can readers best lend a hand by direct financial assistance or by advising clients upon worthy causes ? There are so many good causes that fortunately the personal tastes of would-be benefactors may be indulged. If the benefactor's interest lies in the young, then there are many good causes to help deprived or neglected children, or orphans, or those suffering from or afflicted by results of disease. Other organisations cover spare time activities of fit children and help them to lead healthier and more enjoyable lives. Again, there are bodies which look after the welfare of the family group and help in domestic emergencies of one sort or another, a home suddenly broken or one expecting back from prison maybe the husband and father. Then there are the societies which help those concerned with working full-time or part-time at sea ; others which carry on relief work overseas or missionary work abroad or at home. Other societies, nobly helped by volunteer workers, assist the aged and people often independent in spirit but—through no fault of their own—unable any longer to support themselves completely unaided. There are victims of two world wars who must be looked after for the rest of their lives, and those, ex-service or civilian, who can be helped to help themselves by rehabilitative training. Again, long-term sufferers of blindness, deafness and other physical or mental defects can all be given a helping hand. Those to whose hearts animal welfare is close, and lovers of the countryside, historic buildings and churches, also have opportunities to give tangible evidence of their sympathies.

Let us hope that a lack of response to charitable appeals never becomes a new factor under any sun which may happen to show itself in this country. To help to maintain the old and long tradition of generosity to those less fortunate than ourselves, please turn to the list of charities given at p. 904 of this issue and take your choice—the more the better.

# THE PROPOSED NATIONAL WILLS REGISTRY

WHEN perusing the notices seeking the whereabouts of lost wills that one sees in the *Law Society's Gazette* each month, has it ever occurred to the readers of this journal to wonder :—

(1) How many countless thousands of wills are now reposing in the strong rooms of solicitors all over the country in cases where the testator has long since been dead and his estate has been administered as intestate ?

(2) Why should it be necessary for solicitors to advertise for the whereabouts of such lost wills ?

(3) What percentage (if any) of such lost wills are ever traced as a result of such advertisements ?

(4) Do we, or our staff, consistently go through our wills register month by month to see if, perchance, we have any such lost wills in our safes, and even if we were so punctilious in doing so, what remuneration would we be entitled to charge for our diligence ? (See Law Society's Digest, Opinion 1481.)

(5) What happens to the large number of estates where a lost will cannot be found, having regard to the fact that in many cases the solicitors inserting the notice must have strong grounds for believing that the deceased has made a will, and has probably left it with another solicitor ? Is it not reasonable to assume that, notwithstanding the fact that a will has probably been made and cannot be traced, an administration grant is later obtained for the estate, and that in many such cases the testator's wishes, as expressed in his last will, are never carried out ?

(6) What action should the conscientious solicitor take about these wills which are now cluttering up our safes, and dare we destroy them ?

These are some of the problems which prompted Mr. Meyrick Williams and the writer to urge The Law Society to set up a National Wills Registry about a year ago, a proposal which was supported by The Law Society at the Conference at Eastbourne in September.

For many years it has perplexed the writer why solicitors, who are, by their training and experience, orderly and have a bent for organisation, have not set up such a National Wills Registry long since and have been content to rely upon the present " hit-and-miss " methods.

Is it not surprising that a country like British Columbia, which by comparison with this country is young and thinly populated, saw the necessity for setting up a National Wills Registry in 1945 ? Enquiries made by The Law Society there confirm that this National Wills Registry is a success and that the entries and searches are steadily increasing in their effectiveness year by year.

## Scheme for Registry

If such a National Wills Registry were now established here, my proposals would be as follows :—

(1) It must be on a national basis, run by or under the ægis of The Law Society, and no other person, firm or company in the United Kingdom should be enabled to set up a similar organisation.

(2) It must have an efficient filing system. For a start I imagine that the staff required for this need only consist of a supervisor and a few young ladies as filing clerks, and the registry should at least be financially self-supporting.

(3) Solicitors and banks should be urged to fill in and send to the wills registry record cards (say in red) in respect of every will or codicil they hold in their safes at the time the registry starts, giving the name and address of the testator and the date of the will or codicil, together with the name and address of the solicitor or firm concerned. In this case no filing fee should be charged.

(4) In the case of wills executed after the wills registry has commenced to function, solicitors should be encouraged to obtain the consent of their testator/client to their filing a record card (say in green) containing the same particulars as above.

(5) Whenever a solicitor receives instructions from a presumed executor or next of kin to trace the whereabouts of a lost will or to ascertain, if possible, whether a deceased person has made a will or not, he will complete and send to the registry a search form (say in white) with (*a*) the name and address of the deceased, (*b*) the name and relationship of the person on whose behalf the search is being made, and (*c*) the name and address of the solicitor, accompanied by a search fee of say 5s. for members and 10s. 6d. for non-members, and such search certificate will be returned to him by the wills registry with the result of the search within a day or so.

## Results of search

When the solicitor making the search receives such certificate, if it should reveal that no will has been registered in the wills registry, it will then be reasonably safe to assume either that the deceased has not made a will or that, if he has, it has been revoked or lost or destroyed, and therefore the chances of finding it are remote. If, however, the search certificate should reveal the registration of the will of a person having a similar name to that of the deceased, the searching solicitor will then write (on another prescribed form) to the solicitor who has filed the notice concerned, giving him the full name, address and occupation of the deceased whose will is sought. If this name, address and occupation should correspond with the will held by the filing solicitor, these solicitors will then continue to correspond with each other, and the will, when confirmed as relating to the same testator, will be handed over to the searching solicitor. But if not, the filing solicitor will merely reply to the searching solicitor informing him that his enquiry does not correspond with the details of the will he holds.

If the search certificate should reveal a will dated prior to a will held by the searching solicitor (which would indicate that the earlier will held by the filing solicitor had been revoked by the later will), it may then not be necessary for the searching solicitor to take any further action about the prior will.

If, however, the filing solicitor holds a will dated later than the will held by the searching solicitor (which he proposed to offer for probate as the last will), then the searching solicitor would (on being satisfied that the testator was the same person) obtain this later will from the filing solicitor and offer it for probate instead of the earlier will.

## Advantages and objections

It has always appeared to the writer that the Probate Registry Rules contain many obvious loopholes. As solicitors all know to their cost, the Probate Seat is often (quite rightly) very punctilious about the wording of affidavits leading to a grant and insists that they must contain the set form of words

for "clearing off" (in an oath for executors which states that the deponent believes the will exhibited to the affidavit to be the "last will"), and in the case of an intestacy the oath for administrators is required to state "that there is no will in existence." It is, however, rather surprising that the Probate Registry do not go further in their requirements and require the applicant to state in such oath (*a*) what steps have been taken by the deponent to ascertain that the will offered for probate is the last will, or (*b*) what searches and enquiries have been made to verify that the deceased did not leave a will. Another material thing which appears to be lacking in the requirements of the Probate Seat is the production of a death certificate of the deceased in all cases, because it is possible for an unscrupulous person to obtain a grant of administration, or even probate of a will, of a person who is still alive.

It may be objected that adoption of the scheme might cause delay in the lodgment of papers at the Probate Seat, but the answer to that is that there should be no more delay occasioned by this procedure than by that of making a search in the Land Registry. In any event if a short delay did occur, this would be insignificant, and it is surely better for this to happen than that probate should be granted to a will which may have been revoked or superseded by a later will, or that letters of administration should be granted in cases where a valid will might still be in existence and could be traced.

### Inauguration of scheme

It is to be hoped that the various committees of The Law Society will approve the setting up of such a National Wills Registry, and that the solicitors' profession will thereafter support and co-operate with them to make the scheme a success for the benefit of the legal profession and the public at large. It is feared that, unless the profession now set up their own organisation, the Government might decide to do it themselves in the future.

I would suggest that The Law Society should give publicity to the scheme in the national Press and issue a statement as to how it will be carried out, and thus encourage testators who might be holding their own wills to take them to their solicitors for registration. Any such publicity might help the public to realise that it is still the function of solicitors to make wills for people, despite the fact that banks nowadays seem to be filching this business from solicitors.

If the scheme goes through it is also to be hoped that The Law Society will amend their present ruling (Opinion 1481) and enable solicitors to be legally entitled to make a reasonable charge for any work they may carry out for clients in taking care of their wills and making proper enquiries before handing over the wills of deceased clients to other solicitors, and also in filing and making searches at the proposed wills registry.

### Old wills held by solicitors

As regards the wills which are now cluttering up solicitors' safes, where in a number of cases they have reposed for many years, nothing having been heard by the solicitors holding them from the testators for a long time, in such circumstances it might be reasonably safe to assume that the testator has long since died or revoked his will. I would therefore suggest that a probate rule should be made which would authorise solicitors, if they so wished, to lodge all wills they may hold dated prior to say 1900 or 1910, with the Probate Registry or the National Wills Registry, to enable microfilms to be made of such wills as records and thereafter to authorise their destruction. If this could be done, and if, by a mere chance, a testator claimed a will that had been destroyed, or it was claimed by his executors on his decease, the Probate Registry would then treat the microfilm as if it were the original will and admit it for probate.

H. C. HARDCASTLE SANDERS.

# CLUBS AND THE LOCAL AUTHORITY

IN this article it is proposed to consider the several ways and means by which a local authority may assist, financially or otherwise, the formation and/or maintenance of clubs formed for worthy objects, normally designed (to use an expression on which there has been a great deal of litigation recently) to promote "social welfare." We are dealing with the subject first by considering the different types of clubs that may come within this context, and then we shall deal with a few provisions that are common to all these kinds of clubs. Ordinary proprietor's clubs, dining clubs, etc., are of course outside the scope of this article.

### *(a)* Old people's clubs

"Eventide," "Darby and Joan," "Over 60" and clubs with different titles but similar objects are to be found in most of our urban centres of population, and they are a feature of the last twenty years or so. They are founded by a variety of organisations, such as the Women's Voluntary Service, the British Red Cross Society, a local church or an *ad hoc* charity. The local welfare authority (i.e., the county borough or county council) may make grants to any such clubs, where the activities "consist in or include the provision of recreation or meals for old people": National Assistance Act, 1948, s. 31. This same power to make grants, or "contributions," may also be exercised by the local district council (in a county), as the definition of "local authority" usually applicable to Pt. III of the 1948 Act is widened by s. 33 (1), proviso, and s. 64, *ibid.*

In a case where a borough council particularly desire to assist an old people's club, they may be prepared to lease land to them as a site for the club. They may lease corporate land for such a purpose for a period not exceeding ninety-nine years (Local Government Act, 1933, s. 172 (1)), and no Ministerial consent will be necessary. If they have no corporate land available, other land, e.g., housing land, may with the consent of the Minister* be appropriated for the purposes of corporate land under s. 163 of the 1933 Act, and then leased under s. 172, *supra*. If, on the other hand, the authority are prepared to sell land to the club (and this will apply to any class of local authority), they will be able to do so, when the new Town and Country Planning Bill now before Parliament becomes law, without the consent of the Minister, provided the sale is effected at the "best consideration that can reasonably be obtained"; the authority may even be prepared to provide that consideration by way of a grant under s. 31 of the 1948 Act. If something less than the best consideration is to be paid for the land, the consent of the Minister will still have to be obtained.

* The relaxations from Ministerial control contained in Pt. II of the Town and Country Planning Bill will not apply to corporate land.

These observations about the provision of the club site apply equally to young persons' clubs hereafter discussed.

### *(b)* Disabled persons' clubs

The local welfare authority may provide recreational facilities and give instruction "in methods of overcoming the effects of their disabilities," to persons who are blind, deaf or dumb, and to substantially and permanently handicapped persons. Generally these facilities are provided in local authority institutions, etc., in accordance with a scheme made under s. 29 of the National Assistance Act, 1948, but under s. 30, *ibid.*, the local welfare authority (and *not* the district council) may employ a voluntary organisation as their agents, and they may also make contributions to the funds of such an organisation.

### *(c)* Young persons' clubs

Under this heading, the emphasis is on sport and physical training, rather than "welfare" as such, and the legal provisions are to be found in the Physical Training and Recreation Act, 1937, as amended by the Education Act, 1944, the Physical Training and Recreation Act, 1958, and the Local Government Act, 1958. In the first place, the Minister of Education (usually acting on the advice of the local education authority) may make grants towards the expenses of a local voluntary organisation (a local authority will not themselves be able to claim a grant under this Act since the passing of the Local Government Act, 1958) in providing facilities for physical training and recreation, or in respect of the training and supply of teachers and leaders (see 1937 Act, s. 3). Under s. 4 of the 1937 Act, a local authority (i.e., a county borough, county, county district or parish council) may provide playing fields, etc., and also may contribute towards the expenses of a voluntary organisation in providing playing fields, etc. Clubs are included in these powers provided they have "athletic, social or educational objects," and a "voluntary organisation" means "any person or body of persons, whether corporate or unincorporate, carrying on, or proposing to carry on, an undertaking otherwise than for profit" (1937 Act, s. 9). Under s. 1 of the 1958 Act, a local authority may lend money, on such terms as the authority may think fit, to a voluntary organisation for meeting any expenses of the organisation in circumstances where the authority could have made a contribution to such expenses under the 1937 Act, provided those expenses are of a capital nature.

There are also two national organisations which will normally assist with advice on the formation and running of a youth club, namely, the National Association of Boys' Clubs (13 Bedford Square, W.C.1), and the National Association of Mixed Clubs and Girls' Clubs (30–32 Devonshire Street, W.1.).

### *(d)* Community centres

There is no general statutory provision enabling a local authority to assist financially in the promotion or maintenance of a community centre as such, where it cannot be brought within the provisions of the Physical Training and Recreation Acts. However, under s. 93 (1) of the Housing Act, 1957, the local housing authority may provide and maintain any building "which in the opinion of the Minister will serve a beneficial purpose in connection with the requirements of the persons" accommodated on the authority's housing estates; this power has frequently been used to establish community centres and the like.

### Rating and income tax

It remains to make a few observations on the position in relation to the law of rating and income tax of the clubs which we have been considering. The statutory concession of s. 8 (2) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955 (which will not apply after 1961: *Westminster City Council* v. *London University King's College* [1958] 1 W.L.R. 920; *ante*, p. 619) and the discretionary concession of s. 8 (4), *ibid.*, applies to clubs of the type herein discussed, as they are normally hereditaments occupied for the purposes of an organisation not established or conducted for profit, whose main objects are charitable or concerned with the advancement of religion, education or social welfare. If the rating authority (*i.e.*, the county borough or county district council) are not prepared to assist the particular club by making a grant under one or other of the special provisions above mentioned, they may be prepared to reduce, or remit altogether, the rates charged on the club premises under s. 8 (4) of the 1955 Act.

Income tax is not, of course, the concern of the local authority, but it seems relevant to point out that these clubs would, in most circumstances, now be regarded as charities and so exempt from liability to pay income tax, by virtue of the Recreational Charities Act, 1958 (reversing the effect of *Inland Revenue Commissioners* v. *Baddeley* [1955] A.C. 572). The facilities provided will normally be provided "in the interests of social welfare," as defined in s. 1 (2) of the Act—the definition is in fact wide enough to include women's institutes, but not men's clubs (unless the members are in need of club facilities "by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances").

"Social welfare" has recently been the subject of many reported cases on the interpretation of s. 8 of the 1955 Rating Act (p. 901, *post*), but none of these cases in any way impugns the right of clubs of these kinds to come within both s. 8 of the 1955 Act and s. 1 of the 1958 Act. Any such premises would also fall within s. 15 of the Clean Air Act, 1956, which section empowers the local authority, having made a smoke control area order, to make a grant towards the cost of conversion of fireplaces, etc., for the use of smokeless fuel, in cases of certain types of buildings.

Clubs that were charities (and the definition of the Recreational Charities Act, 1958, is of wide and retrospective effect) were entitled to preferential treatment if any of their land was compulsorily acquired, by virtue of s. 85 (4) of the Town and Country Planning Act, 1947, but this section is to be repealed by the new Bill now before Parliament, and in future, clubs, and charities generally, will have to be content with the improved terms of compensation to be made available to landowners generally under the Bill.

J. F. GARNER.

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Mr. MILWYN JENKINS, solicitor, of Llanidloes, Montgomeryshire, has been appointed clerk to Machynlleth Bench of Magistrates in succession to Mr. H. M. Arthur, who died in September.

Mr. RALPH WINDHAM, Chief Justice, Zanzibar, has been appointed Justice of Appeal, Court of Appeal for Eastern Africa.

Mr. R. H. Penley, solicitor, of Dursley, left £32,892 net.

# THE MAGISTRATES' DOMESTIC JURISDICTION

## A CRITICAL SURVEY—II

In the first part of this article, I referred to the frequent delays which occur in the hearing of matrimonial cases by the magistrates and to some of the unfortunate results arising therefrom. The disadvantages of such delay are further exacerbated by the procedure adopted in the hearing of these cases with regard to speeches, whereby the complainant has one speech before calling evidence, whereas the respondent may reserve his speech until after closing his case. The opening speech to which the complainant is entitled is generally accepted to be of small value in domestic proceedings before a magistrate and it is frequently dispensed with altogether by advocates. Indeed it is often an unwise, though courageous advocate who "opens" his case, particularly when there are several other cases waiting to be heard, and the clock is ticking inexorably towards four o'clock. The effect of such a speech is often limited to duplicating the complainant's evidence and to ensuring that the case cannot be finished that day, thus necessitating a wasteful adjournment. It may also evoke displeasure from the bench. The respondent's advocate on the other hand has the final word, an advantage of great value because it enables him to review the evidence, and lay upon it his own emphasis and interpretation. Furthermore, in a case which has been adjourned, he may quite properly, if he has taken a skilful note, refresh the magistrates' memory both on the evidence given and the manner of its giving, in such a way as to favour his case. When this happens the complainant's advocate must sit in mute impotence unable to answer any of the points made against him. If the speeches are of value to the parties, as I firmly believe, why should the respondent have this advantage? If they are not why should the respondent's advocate cause delay by addressing the court at all? In almost all other classes of proceedings both parties have a right to address the court after evidence is closed and, surely, this rule should be extended to domestic suits before the magistrates.

### Cross-examination

In addition to the procedure affecting advocates with regard to speeches there are also difficulties concerning cross-examination. By reason of the fact that there are no pleadings the advocate acting on behalf of one party may rise to cross-examine the other party without any instructions as to the matters raised. Thus where a wife alleges that her husband has been guilty of persistent cruelty towards her, which allegation is denied by the husband *in toto*, the wife may give evidence as to a series of acts of cruelty which are not known to the husband's advocate, perhaps because they never occurred. Nevertheless the husband's advocate has to rise at once and cross-examine, or alternatively has to seek an adjournment and thereby cause delay. I know of two cases in which London stipendiary magistrates have indicated that they consider that solicitors acting for a party alleging cruelty should provide particulars thereof if such are demanded by the respondent. There is, however, no means of forcing the complainant to provide such particulars except the knowledge that if they are not given the court may view their absence with displeasure.

### Appeal

Once a matrimonial case has been heard in the magistrates' court and a decision has been given, there is only one method of appeal, namely under s. 11 of the Summary Jurisdiction (Married Women) Act, 1895, to the Probate, Divorce and Admiralty Division of the High Court. Such an appeal is, in the main, limited to questions of law, or cases in which the magistrates have, upon the evidence given, reached a palpably wrong conclusion. This limitation of the appeal is in contrast to the right to appeal against conviction by a magistrate in a criminal matter which is made to quarter sessions and amounts to a rehearing. It seems strange that a man convicted of stealing 5s. can obtain a rehearing, whereas a man ordered to pay his wife many thousands of pounds cannot. In 1949 an attempt was made to introduce into the Private Member's Bill which eventually became the Married Women (Maintenance) Act, 1949, a clause introducing appeals, in the nature of rehearings, against the decisions of magistrates in matrimonial cases. This clause was deleted by the House of Lords very largely, it seems, because it was not considered to be a matter which should properly be dealt with in a Private Member's Bill (see *Hansard*, 1948/49, vol. 470). While appeal by way of rehearing is unusual and is not found in proceedings before courts other than the magistrates' courts, it is valuable in any cases in which the procedure adopted is geared to produce summary results. I do not personally consider that magistrates' courts should try matrimonial cases, but, if they continue to do so, it seems only right that appeal to the quarter sessions, by way of rehearing, should be introduced, so as to give to the parties rights at any rate as good as those enjoyed by criminals who appear before these courts.

### Legal aid

One final matter which deserves comment is the question of legal aid in the magistrates' courts. Summary domestic jurisdiction appears to be the Cinderella as far as financial assistance by the State is concerned. The effect of this is that a greater proportion of parties to such cases are unrepresented than is desirable or consonant with justice. It is extremely unsatisfactory to hear parties pleading guilty to matrimonial offences without any legal advice because, in many cases, they do not know what the offence consists of. I recall hearing a husband plead guilty to deserting a talkative wife, who was asked to give formal evidence. Unfortunately for her she told the court too much in her enthusiasm, and it appeared that the husband had been driven out. His plea was changed and he won the case, still, no doubt confused as to the points at issue. If legal aid funds are spent on avoiding such situations they will be well spent.

### Suggested reforms

The comments which I have made may seem numerous and perhaps fundamental but they all spring from the same cause. Domestic proceedings in the magistrates' courts are the poor relations of divorce suits and have been allotted, illogically, to the magistrates' courts which normally deal in crime. Further, they have had assigned to them the procedure used in all complaints in those courts, which procedure is better adapted to petty assaults and accusations of threats and insults. Can any reasonably practicable steps be taken to alleviate the position and give to such cases a procedure which properly recognises their gravity and importance? Perhaps the best procedure would be one akin to that used at Walton Street, Chelsea, where a court

sits all day, presided over by a stipendiary magistrate, sitting with two lay magistrates, one of whom is a woman. This court hears cases emanating from several magistrates' courts, and by sitting all day is able to give greater time to each of them. It should be possible, in London, to provide two or three further courts, strategically placed to gather up the domestic cases from all the stipendiary courts. If it is not possible to transfer these cases from the magistrates' courts, the same rights of appeal should be open to the parties to them as to any man accused of a criminal offence in these courts.

In addition the procedure, during the hearing, would in my opinion benefit from revision, so as to allow both parties the same rights of speech as are given in a civil case and to enable a party against whom a matrimonial offence, particularly cruelty, is alleged, to ask for particulars thereof in simple form. Finally, legal aid should be available to parties in such cases, who are contesting, in purely monetary terms, sums often amounting to several thousands of pounds.

Many of the comments made in this review and many of the suggestions are no doubt open to criticism and reply, but can it be denied that this is a branch of our law which could well be subjected to review? Its growth seems to have been somewhat haphazard, not so much in the nature of the law applied in these courts as in practical and procedural matters which affect parties and advocates who appear in disputes in them. It is just these types of problems which escape the notice of Parliament, and which may persist unless decisive action is taken by those people who are affected by them.

F. H. L. P.

# SOME ASPECTS OF FALSE IMPRISONMENT

As this is a land in which the importance of the liberty of the subject has always been recognised, it is not surprising that the tort of false imprisonment began to take shape at an early period in English legal history. In fact, its roots were in the writ of trespass which was in frequent use in the thirteenth century. Sir Edward Coke knew that "every restraint of the liberty of a freeman is an imprisonment, although he be not within the walls of any common prison" and in his second Institute (2 Inst. 589) he spoke of "a prison in law" and "a prison in deed" thereby suggesting that there could be constructive, as well as actual, imprisonment.

Blackstone (3 Bl. Com. 127) asserted that "every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the public streets," while Termes de la Ley, which was first published in or about the year 1520, defined "imprisonment" as "no other thing but the restraint of a man's liberty whether it be in the open field, or in the stocks or cage in the street, or in a man's own house, as well as in the common gaol; and in all these places the party so restrained is said to be a prisoner, so long as he hath not his liberty freely to go at all times to all places whither he will, without bail or mainprize or otherwise." The fact that a person need not be restrained in a "common gaol" to constitute false imprisonment is well illustrated by *Warner* v. *Riddiford* (1858), 4 C.B. (N.S.) 180. The plaintiff, who was manager of the defendant's beer-house, was given a week's notice. When the accounts had been made up the plaintiff refused to pay certain moneys claimed by the defendant who thereupon prevented the plaintiff from going upstairs. It was held that he was entitled to damages for false imprisonment as the mere restraining of the plaintiff from going upstairs amounted to an imprisonment.

The definition of "imprisonment" as found in Termes de la Ley was approved by the Court of Appeal in *Meering* v. *Grahame-White Aviation Co., Ltd.* (1920), 122 L.T. 44, and it is clear that the word "false," in this connection, means "erroneous" or "wrong" rather than "mendacious" or "fallacious."

### Knowledge of the plaintiff

One of the more difficult aspects of this tort and one which has not yet been considered by the House of Lords is whether a person need know that he was being detained in order to give rise to a cause of action. In view of their decision in *Herring* v. *Boyle* (1834), 1 Cr. M. & R. 377, it would seem that the Court of Exchequer was firmly of the opinion that, in order to succeed, the plaintiff was required to show that he knew that he was being imprisoned. In that case a schoolmaster refused to let the plaintiff, one of his pupils, go home for the Christmas holiday because his mother had not paid his fees and the court decided that an action for false imprisonment could not be maintained as there was no evidence "that the plaintiff was at all cognizant of any restraint" (*per* Bollard, B.).

However, by a majority of two to one, the Court of Appeal appear to have arrived at a different conclusion. In the case which was before them, the infant plaintiff was suspected of stealing a keg of varnish, and he complied with a request to go to the offices of his employers, the defendants, and to remain in the waiting room. Two of the defendants' police, who had accompanied the plaintiff to the offices, stayed in the neighbourhood, but he agreed to wait there on being told that he was wanted to give evidence in connection with certain thefts. The plaintiff's action for damages for false imprisonment was successful as the court took the view that from the moment that he came under the influence of the defendants' police he was no longer a free man and he could be imprisoned in law without actually knowing that he was being detained (*Meering* v. *Grahame-White Aviation Co., Ltd., supra*). In the course of his judgment, Atkin, L.J., expressed the opinion that "a person can be imprisoned while he is asleep, while he is in a state of drunkenness, while he is unconscious, and while he is a lunatic. So a man might in fact be imprisoned by having the key of a door turned against him so that he is imprisoned in a room in fact although he does not know that the key has been turned." His lordship admitted that if it was found that the plaintiff was not aware of his imprisonment that fact might be taken into account in assessing the quantum of damages but, in view of *Meering*'s case, it must be accepted that knowledge on the part of the plaintiff is not an essential ingredient of the tort of false imprisonment. This position is consistent with *Grainger* v. *Hill* (1838), 4 Bing N.C. 212, where the plaintiff was in any case too ill to move, but it is unfortunate that *Herring* v. *Boyle, supra*, does not appear to have been referred to in the course of argument or in the judgments of the Court of Appeal.

### No means of escape

There can be no doubt that a person cannot contend that he was imprisoned if there were means of escape open to him. Thus, in *Bird* v. *Jones* (1845), 7 Q.B. 742, it was shown that a part of Hammersmith Bridge, which was normally used as a public footpath, was wrongfully enclosed by the defendants for the benefit of spectators of a boat race. The plaintiff wanted to cross the bridge and insisted on using the footpath which, on this occasion, had been closed to the public. He climbed the temporary fence but two policemen said that he could not go any further and that if he wanted to cross the bridge he would have to do so on the other side. The plaintiff remained in the enclosure for more than half an hour and claimed to be entitled to damages for false imprisonment, but his action failed as a way of escape was open to him if he had chosen to use it. *Robinson* v. *Balmain New Ferry Co., Ltd.* [1910] A.C. 295 was a similar case. There, the plaintiff paid a penny to use the defendants' ferry but when he discovered that he would have to wait some twenty minutes he changed his mind and tried to leave the wharf. In accordance with the defendants' regulations a penny was also payable on leaving the wharf, but the plaintiff refused to pay this sum and for a time, after having attempted to force his way out, he was forcibly detained by the defendants' officers. His action for false imprisonment did not succeed as the Judicial Committee of the Privy Council took the view that the toll was reasonable and the defendants were entitled to resist the plaintiff's forcible passage through their turnstile with the object of avoiding payment. In other words, a way of escape was available to him: he had only to pay the penny toll.

As they were in *Robinson's* case, the means of escape must, in all the circumstances, be reasonable and Sir John Holt, C.J., suggested that they would not be reasonable if taking advantage of them involved, for example, exposure of the plaintiff's person, damage to his clothing or physical injury to another (see *Wright* v. *Wilson* (1699), 1 Ld. Raym. 693). What would be the position if there was a means of escape available but the plaintiff had no knowledge of it? This question does not appear to have been answered by the courts, but the late Professor Winfield thought that his detention would constitute false imprisonment unless any reasonable man would have realised that a way of escape was open to him. He took the view that if the defendant merely pretended to turn the key of the door of a room in which the plaintiff was present and took away the key, it would be unreasonable if the plaintiff made no attempt to see whether the door was in fact locked and for this reason his action for false imprisonment would fail. It is difficult to think of a solution which is likely to be more acceptable if such a situation should ever arise.

### Arrest on suspicion of crime

In recent years, in relation to false imprisonment, the most important cases have been concerned with the arrest of persons suspected of a crime. The foundation of the modern law on this particular aspect of the subject is to be found in *Broughton* v. *Jackson* (1852), 18 Q.B. 378, where Lord Campbell, C.J., said that it was for the defendant to show " reasonable grounds of suspicion for the satisfaction of the court; it is not enough to state that he himself reasonably suspected. But he is not bound to set forth all the evidence; it is enough if he shows facts which would create a reasonable suspicion in the mind of a reasonable man." For example, in *Hogg* v. *Ward* (1858), 27 L.J. Ex. 443, the defendant, a police constable, arrested the plaintiff, whom he had known for twenty years, on a charge of stealing some leather harness. The defendant did so because a person told him that his harness, which had been stolen a year before, was that which was now in open use by the plaintiff. The action for false imprisonment was successful as the arrest was not made on reasonable grounds.

It should be noted that to justify an arrest for a suspected felony the defendant, if he is a private person, must also prove that the felony in respect of which the arrest was made had actually been committed by someone, not necessarily by the plaintiff, but where the defendant is a police constable, he need only show that there was reasonable and probable cause for suspicion and it matters not if it subsequently appears that no felony had in fact been committed by anyone.

However, where either a private person or a police officer arrests a person on reasonable suspicion of any crime for the arrest of which a warrant is not required, the person arrested must be told truthfully why he has been detained. Technical or precise language is not looked for but the person arrested should be informed of the substance of the charge against him. This principle was finally established by the House of Lords in *Christie* v. *Leachinsky* [1947] A.C. 573. In that case the appellants, who had reasonable grounds for suspecting that the respondent had committed the felony of larceny, arrested him on a charge of " unlawful possession," a statutory offence for which they had no power to arrest without warrant. The respondent was detained overnight in a police station, but when he was brought before the magistrate the charge of " unlawful possession " was withdrawn and he was directed to the cells by one of the appellants who told him that he would be charged with larceny. Damages for false imprisonment were recovered by the respondent in respect of his first night in custody as the appellants could not rely on their reasonable suspicion of larceny as the respondent had been told that he was being arrested for " unlawful possession," but his claim for the period between the withdrawal of one charge and the making of the other did not succeed as he knew for what alleged felony he had been detained. This rule is not without exceptions as in the course of his speech Lord Simonds found that no explanation is required " if the arrested man is caught red-handed and the crime is patent to high heaven " or if it was practically impossible to tell him the reason for his arrest.

### Speedy dealing with offence

The person arrested must be taken before a magistrate or a police officer as soon as is reasonably possible. In *John Lewis & Co., Ltd.* v. *Tims* [1952] A.C. 676 a daughter was seen to put four calendars into a paper bag carried by her mother. After they had left the premises, two store detectives took them back to the shop, by which time they knew for which crime they were being arrested, and detained them to await the decision of the managing director as to whether to prosecute and, in view of his decision, the arrival of the police. The daughter was tried and convicted but the charge against her mother was withdrawn. The mother claimed damages for false imprisonment in respect of her detention for the period between being arrested and being charged. Her action failed as it was found that she had been taken before a justice of the peace or a police officer as soon as was reasonably possible. As Lord Porter put it, the question is: " Has the arrester brought the arrested person to a place where his alleged offence can be dealt with as speedily as is reasonably possible? " In *Tims'* case, he had.

D. G. C.

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# TRADING REPRESENTATIONS (DISABLED PERSONS) ACT, 1958

FROM 1st January next generally it will be unlawful for a seller of goods to advertise his wares as made by, or sold for the benefit of, blind or otherwise disabled persons unless he is registered by the Minister of Labour and National Service under the Trading Representations (Disabled Persons) Act, 1958.

This measure was passed in order to end exploitation of the public and disabled persons by unscrupulous firms and individuals seeking orders for certain goods by door-to-door trading or by post. These goods are priced far above their real value and are sold by appealing to the charitable instincts of the buyers who are led to believe that blind or other disabled people are employed in their production and are assisted by the profits from such sales. Not only does this despicable trading bring unmerited profit to the businesses and canvassers concerned but, when the truth about their activities becomes known, it unjustly reflects upon, and hinders the success of the activities of, genuine organisations working for the welfare of the blind and disabled.

It is to be hoped that much publicity will be given to the registration requirement so that members of the public may be on their guard against further exploitation and in a position to report any approach they may receive from bodies that do not appear to be registered under this Act. In England or Wales the council of a county, county borough, county district or metropolitan borough, or the common council of the City of London, may institute proceedings for an offence against the registration requirements (s. 1 (3) and (5)). Any person summarily convicted is liable to a fine not exceeding £100 or imprisonment up to three months, or to both (s. 1 (1)). A director, manager, secretary or other similar officer (or any person purporting to act in any such capacity) of any body corporate convicted under the Act may also be convicted (s. 1 (4)).

## Exemption from registration requirements

It should be said at once that the Minister has power to exempt from the registration requirements any body of persons appearing to him to be carrying on business without profit to its members (s. 1 (2) (*d*)). Further, registration is not required in respect of a business carried on by a local authority, by an undertaking registered or exempted under the War Charities Act, 1940, or that Act as extended by the National Assistance Act, 1948, s. 41, by an undertaking providing facilities under the Disabled Persons (Employment) Act, 1944, s. 15, or by a "substantially disabled" person selling only his own products (s. 1 (2)). The definition of "substantially disabled" is curious. Whereas, for the purposes of the Act, it is reasonably clear what is meant by "blind or otherwise disabled persons" being "persons under any disability, whether physical or mental, attributable to illness, injury, imperfect development or congenital deformity" (s. 4 (1)), "substantially disabled persons" are defined as "persons substantially handicapped, whether permanently or not, by any such disability as aforesaid" (s. 4 (2)). This begs the question as to what is meant by "substantially." It should not have been impossible to give a more precise definition, for example by reference to degree of disability on the percentage assessment basis used in the administration of the National Insurance (Industrial Injuries) Acts, 1946 to 1957.

## Registration procedure

Registration is necessary for any person (including a body corporate) or organisation, not falling within one of the above-described exempt categories, intending, in selling or soliciting orders for goods of any description, to represent or imply that blind or otherwise disabled persons are employed in the production, preparation or packing of the goods or benefit, otherwise than as users of the goods, from their sale or from the carrying on of the business (s. 1 (1)). The Act covers representations made in the course of house to house and postal trading but not to sale of goods in shops. However, any advertising matter containing any such representations in respect of goods on sale in shops would appear to be caught by the Act.

Section 2 contains the provisions governing applications for and granting of registrations under the Act. The first step to be taken by an applicant for registration is for him to advertise his intention to seek registration. The advertisement, which must specify the description of goods in respect of which registration is applied for, must appear in a newspaper circulating in an area containing persons likely to be concerned, such as the householders to whom trading representations will be made. The advertisement must include a statement that representations regarding it may be made to the Minister within fourteen days after its publication. The Minister is debarred from proceeding with an application until twenty-one days from the publication of the advertisement. A copy of the published advertisement must accompany the registration application form to be returned to the employment exchange nearest to the applicant's place of business.

### *Discretion of Minister with regard to registration*

Considerable discretion is vested in the Minister in relation to the granting or cancellation of a certificate of registration. Before he may register a person under the Act the Minister must be satisfied, in relation to the relevant goods, that representations about the extent and nature of the employment for substantially disabled persons, or any description of such persons, and any benefit to them, to be provided by the sale of the goods or the carrying on of the business, can reasonably and properly be made in relation to the goods and that they will fairly convey the extent and nature of the employment or benefit (s. 2 (2)).

The applicant must supply what information the Minister requires with respect to—

(*a*) the number of persons to be employed by the applicant in connection with the production, preparation, packing and sale of goods of the description to which the application relates, the capacities or operations in which they are to be so employed, and the proportion of the whole, or of those to be employed in particular capacities or operations, which consists of persons who are substantially disabled or of any description of such persons;

(*b*) the terms of employment, and in particular the remuneration, of persons to be so employed who are substantially disabled or of any description of such persons;

(*c*) the source from which the applicant will obtain the goods of the description in question to be offered for sale by the applicant, where they are not to be produced by the applicant, and the persons by whom such goods will be prepared or packed where the goods are not to be prepared or packed by the applicant;

(*d*) the nature of the representations with respect to employment of, or benefit to, substantially disabled persons which it is proposed to make in connection with the sale of the goods, and, where it is proposed to make the representations in relation to a particular description of such persons, the nature of that description of persons; and

(*e*) any other matters relevant to determining whether the applicant should be registered (s. 2 (6)).

Registration under the Act may be granted either for a specified period or indefinitely (s. 2 (3)). It is open to the Minister to impose requirements on persons registered for securing that any representations made correctly set out the facts (s. 2 (4)).

Any person registered under the Act must be supplied with a certificate of registration by the Minister (s. 2 (8)).

*Cancellation of registration*

If at any time the Minister is satisfied that unfair representations are being made, he must cancel the registration; and he may cancel it if any requirement specifically imposed on a person registered in relation to representations made is not complied with (s. 2 (5)). The Minister may also cancel the registration of any person who without reasonable excuse fails to furnish such information, which the Minister requires, as may be relevant to the exercise by the Minister of his powers of cancelling registration (s. 2 (7)).

Any registration certificate, cancellation thereof or requirement imposed under the Act may be sent by post to the usual or last known address of the person to whom it is to be sent (s. 2 (8)).

**Appeals under s. 3 of the Act**

An applicant may appeal to the magistrates' court acting for the petty sessions area comprising the appellant's place of business against (1) refusal of his application for registration; (2) registration for a period only; (3) the shortness of the period; (4) any requirements imposed; or (5) the cancellation of registration.

An appeal must be brought within twenty-one days from the sending of the relevant notice or certificate to the appellant. The cancellation of a registration is not effective until the expiry of the time for appealing or, if any appeal is brought, until either it is abandoned or all proceedings thereon or in consequence thereof are determined.

The court may (1) direct the Minister to register an applicant; (2) vary or cancel any requirements imposed by the Minister; (3) give directions as to the duration of a registration; or (4) annul a cancellation of a registration.

From the magistrates' court an appeal lies to quarter sessions.

**Enforcement of the Act**

Requirements relating to registration under s. 1, by subs. (6) thereof, become operative on 1st January, 1959. It is doubtful, however, whether many registrations will have been made by then owing to the fact that at the end of November registration application forms (D.P. 150) and explanatory leaflets were still not available at employment exchanges. As has been explained above, the Minister is precluded from proceeding with an application for the three weeks following publication of the requisite advertisement in connection therewith. Further, the normal practice to be followed will be for an applicant to be visited by an officer of the Ministry to discuss with him details of the application. The arrangement for such a visit, together with the exercise of the wide discretion given to the Minister, is bound to take time and it may be some months before the Act has become fully operative. The sooner that its provisions become effective, the better for members of the public and for the associations genuinely working for the welfare of the blind and disabled, as well as for the victims of disability themselves.

N. D. V.

# CHARITY TRUSTEES' POWERS OF INVESTMENT

## ATTRACTION OF EQUITIES

It is a general rule that funds in the hands of charity trustees requiring investment must be invested according to the provisions, if any, of the instrument creating the trust; or, if there are no such provisions, in ordinary trustee securities.

Investments in trustee securities play an important part in the working of the monetary machine and are a useful means of maintaining a flow of funds to finance public investment. But if investment in fixed interest stocks in a period of inflation helps the Government with its finances, not only is the primary object of capital safety so often defeated in the event by quite immoderate falls in capital value, but the purchasing power of fixed income lags ever behind the cost of living. Charity trustees therefore, no less than trustees of private trusts and institutional and private investors in general, have recently shown an increasing tendency to protect themselves against capital depreciation and a fall in the real value of money by investing (if possible) part of their funds in selected equities.

In 1952 the Nathan Committee (Cmd. 8710) recommended that the range of investments permitted by the Trustee Act, 1925, should be extended, but the Government did not commit itself to accepting this recommendation. Section 54 of the Local Government Act, 1958, however, has made it permissible for trustees to lend money at interest to a greatly extended list of local authorities, while the House Purchase and Housing Bill proposes to confer trustee status on the deposits of certain building societies approved by the Chief Registrar of Friendly Societies. This will presumably result in considerable sources of money finding their way into investments from which they were previously excluded, but again, while this move will undoubtedly assist in the furtherance of a house-owning democracy, the problem of the diminishing power of money administered by trustees (save in so far as they are able and permitted to deal with the problem themselves) remains unsolved.

Accordingly, it is felt in many quarters that what is needed is a complete overhaul of the existing list of authorised trustee investments, and it is just possible that a hint of coming legislation to that end may have been given by the Lord Chancellor in the House of Lords debate on the Variation of Trusts Bill (now Act), 1958. During the debate Lord Simonds said that it would be open to trustees and beneficiaries to apply to the court under the Act for a wide investment clause to be substituted for a narrow investment clause, and he suggested that if it was desired that trust funds should find a wider scope for investment, that should be dealt with by an amendment of the Trustee Act, 1925. The Lord Chancellor in rejecting this

suggestion said that he had "found many changes in circumstances where I think it is far nearer approximation to justice that the matter should go to the court rather than wait for legislation."

Meanwhile, in appropriate cases, and to a limited extent, power to invest in non-trustee securities where unauthorised by the trust instrument or the rules may be obtained by means of a scheme approved by the court, the Charity Commissioners or the Minister of Education. Power may also be obtained in this way to conflate and combine several trust funds into one combined fund or pool in which the several trusts are deemed to be interested in appropriate aliquot shares.

### Scheme-making powers

The High Court enjoys all the scheme-making powers which the Charity Commissioners and the Minister of Education enjoy as well as some ancient non-statutory powers of its own in relation to charities. Whether a scheme for the regulation of a charity should be settled by the court or by the Charity Commissioners depends on the circumstances in each case, but as a rule the court will make schemes in contentious cases or in proceedings taken by the Attorney-General *ex officio*, or where a scheme becomes necessary in the course of an administration action or of any charitable proceedings.

The Charity Commissioners may settle schemes, where the gross annual income of the charity is less than £50, on the written application of the Attorney-General, or all or any of the trustees or persons administering, or claiming to administer, or interested in a charity, or any two or more inhabitants of any parish or place where the charity is administered. Where, however, the gross annual income of the charity (exclusive of the yearly value of buildings or land used by the charity, and not yielding any pecuniary income) amounts to or exceeds £50, the Commissioners may make a scheme only upon the written application of the administering trustees or a majority of them.

The powers formerly vested in the Charity Commissioners to frame schemes in respect of any endowment held solely for educational purposes in England or Wales, and later in the Board of Education, are now exercisable by the Minister of Education; and the powers of the Charity Commissioners to frame schemes in respect of certain quasi-educational endowments or trusts have been transferred to the Minister. The question whether an endowment is held for, or ought to be applied to, solely educational purposes may be determined by the Charity Commissioners.

Sometimes an Act of Parliament directs that a scheme be made by the Charity Commissioners, e.g., the City of London (Union of Parishes) Act, 1907, and the York (Millgate Strays) Act, 1907, while pooling operations have been adopted with success in schemes formulated under the Universities and Colleges (Trusts) Act, 1943, and by the Birmingham University Act, 1948. A recent Measure involving consolidation and investment outside the trustee range is the Church Funds Investment Measure, 1958. Subject to some exceptions, schemes established by statute cannot be altered by the court or Charity Commissioners, but matters not provided for by the statute may be regulated by the court: *Re Shrewsbury Grammar School* (1849), 1 Mac. & G. 324, at p. 333. Recourse to Parliament may therefore be entailed where even slight alterations are necessary in the provisions of schemes possessing statutory sanction: Charitable Trusts Act, 1853, s. 54.

### *Re Royal Society's Charitable Trusts*

In the absence of fraud, wilful concealment or misrepresentation, trustees of charities may obtain immunity from liability by applying to the Charity Commissioners for advice or direction respecting the charity or its administration and acting upon such advice: Charitable Trusts Act, 1853, s. 16. What is less well known is that the Charity Commissioners have power to, and in appropriate cases will, authorise the investment of charity funds outside the trustee range of investments so as to include ordinary stocks and shares. In the exercise of such powers it seems that the Commissioners are largely guided by the general principles approved by Vaisey, J., in *Re Royal Society's Charitable Trusts; Royal Society* v. *A.-G.* [1956] Ch. 87.

In that case the Society, which was incorporated by Royal Charter, held as trustee on various charitable trusts a large number of trust funds differing widely in value. The Society as trustee applied to the court for authority (*a*) to invest the trust funds beyond the range of authorised trust investments, and (*b*) for investment and accounting purposes to consolidate different trust funds together. The ground of the application for authority (*a*) was that the Society's activities in promoting scientific research had been severely curtailed owing to currency inflation, and for authority (*b*) that consolidation would simplify the administration of the trusts so far as their investments were concerned; and that, in investing outside the permitted range of trustee securities, it was essential that such risks as were involved should be spread over a considerable number of investments, which would be impracticable with small funds.

It was held that while the court had no power to authorise the proposals either under the Trustee Act, 1925, s. 57 (1) (but see the judgment of Danckwerts, J., in *Re Shipwrecked Fishermen and Mariners' Royal Benevolent Society* [1958] 3 W.L.R. 701; p. 878, *ante*), or under the court's general jurisdiction as exercised in relation to ordinary trusts, the court had power under its special jurisdiction relating to charities, at the instance of the trustee, the Attorney-General consenting or not objecting, to authorise the proposals by way of a scheme, but such power must be exercised sparingly and not indiscriminately.

### Previous authorities

In reaching this decision Vaisey, J., applied the *dictum* of Sir John Romilly, M.R., in *A.-G.* v. *Sherborne Grammar School* (*Governors*) (1854), 18 Beav. 256, at p. 280, that ". . . in dealing with matters of charity . . . this court . . . has authority to direct a scheme in order to enforce (meaning "secure") the more complete attainment of the objects (of the founder)" and of Lord Watson in *Andrews* v. *M'Guffog* (1886), 11 App. Cas. 313, at p. 316, where he said: "In the case of a public charitable trust the courts have a power and discretion which does not belong to them in the case of a private trust. The rule is this, that while the court cannot alter the object of the trust, they may, according to the circumstances of each case, vary the mode of its attainment, although differing from the directions of the truster". His lordship also referred to a statement made by Sir George Turner, V.-C., in *A.-G.* v. *Bishop of Worcester* (1851), 9 Hare 328, at p. 361, that the Attorney-General acts in cases concerning charities "on behalf of the Crown as *parens patriae* and represents all the objects of the charity".

### Provisions of the "scheme"

The scheme approved in the *Royal Society's* case provided for the consolidation of the capital funds of the several trusts mentioned in the schedule to the scheme together with the investments representing every or any other charitable trust of which the Royal Society might thereafter become the trustee

(provided that such trust contains the necessary power to consolidate); and for each of the trusts being regarded and treated for all purposes as interested in an appropriate undivided aliquot portion of the " pool ".

Up to two-thirds of the pool's investments could be in non-trustee securities covering American Government stocks (both State and Federal) and debentures or debenture stock, or preference, ordinary or deferred shares or stock, or other marketable security of any company incorporated in the United Kingdom or the United States of America, provided that such non-trustee investments are dealt in or quoted on a recognised stock exchange in the United Kingdom or the City of New York. And provided also that, except in the case of British bank and insurance shares, there is no uncalled liability and that the minimum paid-up capital of any company whose ordinary or deferred shares are invested in is not less than £750 or its equivalent.

It is plain, however, from the judgment of Vaisey, J., that he regarded the Royal Society's application as somewhat exceptional, saying that some of the investments to be pooled were small while others were very large, and that unless some kind of pooling was adopted a fair apportionment of the expenses of the Society in regard to those trusts must be a matter of difficulty. It by no means followed that the range of investment ought to be widened as of course whenever a charity found its available income less than the trustees would wish, nor could the existence of a multiplicity of trusts under the administration of one trustee be regarded in every case as justifying a pooling of investments.

Since 1955, on the other hand, further inflationary pressure has been brought to bear on the national economy and a stronger case can now be made out for the inclusion of some equities in every well balanced investment portfolio. Equities, however, are " risk capital " and where the capital of a trust is small—as is often the case—and there is no opportunity for consolidation with other trust funds, a spread of equity investments so essential to safeguard against loss is not possible. But where the capital is large it is understood that the Charity Commissioners will usually be prepared to approve a proper scheme for extending the range of permitted investments, while the court, in appropriate cases, will now be prepared to extend the range of charity investments by order made under s. 57 (1) of the Trustee Act, 1925, as well as by way of a scheme: *Re Shipwrecked Fishermen and Mariners' Royal Benevolent Society, supra.*

### Unincorporated charities

By the Charitable Trusts Incorporation Act, 1872, a charity may be registered as a corporate body. Many charities, however, both large and small, are unincorporated and are governed by rules or bye-laws and regulations, although nothing may turn on the dichotomy. A recent case concerning such a charity is *Re Tobacco Trade Benevolent Association Charitable Trusts* [1958] 1 W.L.R. 1113; *ante*, p. 827.

In this case the charity was formed in 1860 for the purpose of relieving necessitous members of a trade by granting pensions or other relief. The rules did not contain provision for their alteration, nor for investment of funds except a provision that no part of the capital investments should be expended without the concurrence of a majority of shareholders in general meeting. It was assumed that the rules could be altered and in 1871 a rule was added requiring a month's notice of a proposal for alteration of rules to be given before the annual general meeting. In 1894 a rule was added by resolution that funds not immediately required might be invested in trustee investments or such securities as a committee should approve, provided that the approval of the donors should be asked at each annual general meeting. In 1956 a resolution to substitute a new rule enabling the committee to invest outside the trustee range of investments in any securities quoted on the London or New York Stock Exchanges was passed at a general meeting of the charity.

The trustees, by originating summons, asked for the determination of the following questions: (i) whether the resolution passed in 1956 empowering the trustees to invest surplus money in non-trustee securities was valid, and (ii) in case the resolution was not valid, whether the charity might be authorised by way of a scheme under the Charitable Trusts Act, 1853, or under the inherent jurisdiction of the court to invest its endowments in any manner authorised under the resolution of 1956.

Harman, J., held that the alteration of the rules approved at the meeting in 1956 was invalid because the charity never had been able by resolution validly to confer on itself power to alter its rules, except possibly by the concurrence of every member of the charity (see *Harington* v. *Sendall* [1903] 1 Ch. 921). It could not therefore validly extend the range of investments for its funds beyond that authorised for trustee investments. He rejected an argument based on *Ho Tung* v. *Man On Insurance Co., Ltd.* [1902] A.C. 232, that the rule of 1871 had been so long acted on, and must have been so well known to those who subscribed and those who gave legacies over so many years, that it ought now to be considered as a rule of the charity. But, said his lordship, " if that is awkward for the charity they have an easy remedy in their hands; they can go to the Charity Commission and get a proper scheme setting their house in order ". Whether, if in the beginning the rules had provided a power to alter them, the charity could then make use of that power to widen its investment capacity was a wider and larger question on which it was not necessary to embark. His impression was that no such alteration could be made, but he did not so decide because it was not necessary for him to do so.

### Investment in land

It is stated in Halsbury's Laws, 3rd ed., vol. 4, pp. 356, 357, para. 745, that so long as the formalities of the Mortmain and Charitable Uses Act, 1888, are observed, there is no statutory provision preventing trustees from investing charity funds in land, but trustees should only make such an investment where it is clearly beneficial to the charity; and in most cases the trustees will, for their own protection, be well advised to apply to the Charity Commissioners for authorisation of such investment. There are no provisions in the Charitable Trusts Acts expressly enabling the Charity Commissioners to authorise the purchase of land by charities within their jurisdiction, but the Commissioners in practice do so under their jurisdiction to establish schemes under the Charitable Trusts Act, 1860, s. 2, and also under their general power to authorise the application of moneys belonging to charities for any purpose which they may consider beneficial: Charitable Trusts Act, 1853, s. 21. In case of a proposed purchase of land the Commissioners require a report and valuation from a surveyor and a certificate from the solicitors of the charity that the title is good.

Mortgages and charges by trustees of charity lands which are not exempt from the Charitable Trusts Acts are absolutely prohibited, whether the trustees have or have not power to mortgage or charge under the instrument of trust, unless made with the express authority of Parliament or of a judge or

court of competent jurisdiction, or according to a scheme legally established, or with the approval of the Charity Commissioners, unless the charity is for solely educational purposes or for certain quasi-educational purposes.

In the case of an existing charity, where it is proposed to finance a purchase of land by means of a mortgage the Charity Commissioners have power to authorise both the purchase and the mortgage. But a situation not infrequently arises where it is proposed to bring a charity into existence when the purchase is made, but until the purchase is completed there is no charity in existence, so that the Charity Commissioners have no jurisdiction either to approve the purchase or to sanction the mortgage of the property to secure the balance of the purchase money. Such a situation is dealt with on p. 32 of the *Law Society's Gazette* for January, 1958, which reads as follows: "The attention of the Council has recently been drawn to the inability of charities governed by the Charitable Trusts Acts to effect a simultaneous purchase and mortgage of property in the manner which is to-day so customary in commercial and private circles . . . Though this difficulty is, so the Council understand, sometimes surmounted by means of financing a purchase with a bank overdraft intended to be repaid out of the proceeds of a subsequent mortgage approved by the Board (of Charity Commissioners), this course is technically wrong as such a loan constitutes a charge within the meaning of s. 29 of the Charitable Trusts (Amendment) Act, 1855.

"The Council have recommended to the Lord Chancellor that appropriate legislation enabling charity trustees to carry out such a transaction should be introduced and the Lord Chancellor has indicated his acceptance of this recommendation; it is doubtful, however, whether a suitable Bill in which an appropriate provision may be inserted will be before Parliament in the near future. To meet the difficulty in the meantime the Charity Commissioners have suggested that the following practice should be adopted: The trustees of a charity or potential charity should first submit a draft deed of conveyance declaring the charitable trusts upon which the property will be held, together with particulars of the proposed mortgage . . . If the Commissioners are satisfied with the proposals, they will indicate by letter their willingness to make a formal order authorising the mortgage as soon as the trust deed, duly executed and stamped, is received by them".

All of which goes to confirm that the Charity Commissioners are the friends and advisers of charities, and not their masters.

K. B. E.

# JUSTICE BY POST

THE Magistrates' Courts Act, 1957, came into operation in September, 1957. Its main object was to allow minor offenders, especially in traffic cases, to plead guilty in writing to charges which cannot be triable on indictment. This dispenses with the attendance of witnesses, who often used to give formal proof of offences to which there was never likely to be a defence anyhow. The Act also allows previous convictions to be proved in the absence of the defendant, provided he has had seven days' notice of the intention of the prosecutor to do this. Some fears were expressed when the Bill was before Parliament that to make it easier for the police to bring charges would lead to a big increase in prosecutions. No statistics are available to show if this has occurred.

Although the Act is concerned with only minor offences, there have been three High Court decisions on it already. Two must have been brought on matters of principle alone, since the fines inflicted were small, but in the third the defendant had a genuine grievance.

The Act provides that the defendant, when served with the summons, shall also receive a statement of the facts of the case and an explanation of his right to plead guilty in writing or to defend the charge. If he writes to the court admitting his guilt, s. 1 (2), proviso (ii), requires that his plea and any statement in mitigation be "read out before the court." In *R.* v. *Oldham Justices; ex parte Morrissey* (Q.B.D., 22nd October, 1958), it was admitted by the clerk to the magistrates that the defendant's letter giving some facts in mitigation had not been read aloud, although the clerk believed that the magistrates had full knowledge of his letter as it had been handed to them. The Divisional Court held that knowledge and reading of the letter was not sufficient but that it must be read out in open court. Certiorari to quash the conviction was granted.

Earlier in the year, the Divisional Court had reached a different conclusion where the facts were different. In *R.* v. *Davis; ex parte Brough* (8th May, 1958), there was an affidavit by the magistrate to the effect that he remembered hearing at least a part of the defendant's letter in mitigation read out, although the defendant claimed that it had not been read aloud. Further, the defendant himself, although he had written pleading guilty, was present in the magistrates' court. When his case was called on, he did not answer to his name. The Divisional Court attached some significance to his conduct and Lord Goddard, C.J., said that certiorari was discretionary in circumstances of that sort. The conviction was not quashed. However, it seems that, had the court been satisfied that the defendant's statement had not been read out aloud, the conviction probably would have been quashed.

Section 1 (2), proviso (iii), says that a defendant who has pleaded guilty in writing may not be sentenced to imprisonment or detention or be subjected to any disqualification unless the court has adjourned to give him a chance to be present and urge why he should not be dealt with in that way. In *R.* v. *Totton Justices; ex parte MacDiarmant* [1958], Crim. L.R. 543, magistrates had disqualified the defendant on his plea of guilty in writing under the Act, without adjourning to give him a chance to be present. This being a breach of the procedure laid down by the statute, the part of the conviction ordering the disqualification was quashed, but the defendant had to pay the costs as he was getting off the disqualification. Where the case has been proved by sworn evidence in the defendant's absence without the procedure of the Act being used, however, he can lawfully be disqualified without an adjournment being necessary.

It is perhaps interesting to see that this Act, in its short life so far, has produced at least three High Court decisions while the Road Transport Lighting Act, 1927 (now consolidated with its amending Acts in the Road Transport Lighting Act, 1957), has produced hardly any reported decisions, although the number of prosecutions for lighting offences is considerable. The Magistrates' Courts Act, 1957, incidentally does not apply in juvenile courts, though it would apply where a juvenile was lawfully being tried along with an adult in a magistrates' court.

G. S. W.

# LEAVING LAND TO A CHARITY

NEARLY six years ago the Committee on the Law and Practice relating to Charitable Trusts recommended in para. 274 of its Report (Cmd. 8710) that the requirement of s. 5 of the Mortmain and Charitable Uses Act, 1891 (54 and 55 Vict. c. 73), that land assured to charitable uses by will must be sold within one year from the death of the testator, should be repealed. In 1955, in para. 16 of a statement of policy arising out of the Report (Cmd. 9538) Her Majesty's Government accepted the proposal of the Committee in this respect. At the moment, however, there appears to be little prospect of legislation to give effect to these recommendations and to implement this declaration of policy.

The purpose of this note is to give an outline of some of the administrative problems involved where land is left to a charity and to suggest ways in which testators, executors and charitable organisations may deal more conveniently with difficulties before and as they arise.

### "Land"

The Mortmain and Charitable Uses Act, 1888 (51 and 52 Vict. c. 42), made assurances of land to a charity by will impossible, with certain limited exceptions, but s. 5 of the 1891 Act permitted the leaving of land to a charity by will, although it also provided that any land so left "shall . . . be sold within one year from the death of the testator, or such extended period as may be determined by the High Court, or any judge thereof sitting at chambers, or by the Charity Commissioners." This in itself is a sweeping provision, but it only applies in the case of land, and the meaning of the term "land" for the purposes of the Mortmain and Charitable Uses Acts is provided by s. 3 of the 1891 Act, which says that "'Land' in . . . the Mortmain and Charitable Uses Act, 1888, and in this Act, shall include tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land." This definition includes leaseholds (see *A.-G.* v. *Parsons* [1956] A.C. 421); rent charges; and reversionary interests in land (see *Re Hume; Forbes* v. *Hume* [1895] 1 Ch. 422)—since there is nothing to prevent the sale of a reversionary interest in land within one year of the date of death of a testator, even although the reversionary interest has not fallen into possession. But money secured on land such as by mortgage or charge is not included.

### Advantage of trust for sale

Land left to trustees on an immediate binding trust for sale, where the proceeds of sale are to be used for charitable purposes, is not regarded as land, the interest of the charity being regarded as "personal estate arising from or connected with land" within the definition of s. 3. In such a case the charity is entitled to the proceeds of sale and the trustees for sale are not obliged to sell within one year, but are entitled to postpone the date of sale in accordance with the usual rules which govern them. But they are not entitled to collude with the charity to postpone a sale, and the charity is not entitled to claim rent or profits before sale. If the trustees do delay unduly they will be amenable to the jurisdiction of the Attorney-General (see *Re Sidebottom; Beeley* v. *Waterhouse* [1902] 2 Ch. 389).

The trust for sale must be an immediate binding one, and, if the trustees are empowered to postpone the sale and to pay the rents and profits or any part thereof until sale to the charity, then s. 5 applies and the land has to be sold within one year. In the case of *Re Ryland; Roper* v. *Ryland* [1903] 1 Ch. 467, a testator who left his residuary estate to trustees upon trust for conversion directed that no part of the freeholds or leaseholds thereof should be sold during the lifetime of his wife without her consent, but notwithstanding this direction his will provided that three-quarters of the income of his residuary estate should be applied to certain charitable purposes. It was held that this constituted an assurance of land to a charity and that, as the freeholds and leaseholds had not been sold within one year from the death of the testator, s. 6 of the 1891 Act (which will be considered in a moment) had applied, and the land had vested in the Official Trustee of Charity Lands. This was not the end of the matter, since the same testator not only directed that the charities should receive a share of the income of the residuary estate during the lifetime of his widow, but also directed that they should receive a share of the residuary capital fund after the death of the widow. As the will made it clear that the trustees were bound to sell in any event after the death of the widow, it was held that the reversionary interest left to the charities was not an interest in land, so that s. 5 would not have applied to the reversionary interest left to the charities. But this did not make any practical difference because of the direction to pay a portion of the income to the charities during the lifetime of the widow. Note that it is not sufficient that the trust for sale must be an immediate binding one in the technical sense; it must be such that the charity is entitled to an interest only in proceeds of sale, and not in land before sale.

It is therefore clear from *Re Ryland* that the testator can be of considerable assistance to his executors if he is able to accommodate his charitable intentions within the framework of a trust for sale, but if he fails in his attempt the executors will have to consider the best way in which they can themselves handle the situation.

### Steps open to executors

In the first place they may care to apply under the provisions contained in s. 5 itself, for an extension of the time of sale so as to relieve themselves of the obligation to sell within one year. This application for an extension may be made either before or after the expiry of the year (see *Re Gorham's Charity Trust* [1939] 1 Ch. 410), so that if for instance negotiations for a sale towards the end of the year have become abortive, the executors could apply to the Charity Commissioners for an extension of time. Alternatively they might make application under s. 8 of the Act, in consultation with the charity concerned, for permanent retention of the land. The provisions of this section will be mentioned below in connection with possible steps which a charity might itself take where land has been left to it.

In the second place, if executors do not wish to approach the Charity Commissioners for an extension of time of sale, or if they have approached them without success, they will nevertheless wish to guard against the sweeping provisions of s. 6, which says that if the land is not for any reason sold within one year of the death of the testator it "shall vest forthwith in the Official Trustee of Charity Lands, and the Charity Commissioners shall take all necessary steps for the sale or completion of the sale of such land to be effected with all reasonable speed by the administering trustees for the time being thereof." The sting of this section to-day is not

as sharp as might be feared, for it has been held that by reason of the Administration of Estates Act, 1925, land vested in personal representatives remains so vested in them until they have executed an assent, and the legal estate will not shift to the Official Trustee of Charity Lands automatically at the end of the year. If an assent is made before the end of the year (or extended period) then the legal estate will shift from the assignee to the Official Trustee at the end of the period; if the assent is made after the expiry of the period, the assent operates to vest the land in the Official Trustee at once, although it should be expressed to operate in favour of the devisee as an indication of the identity of the administering trustees (see *Re Gorham's Charity Trust* [1939] 1 Ch. 410). Procrastination in the preparation of the assent will therefore keep the Official Trustee of Charity Lands at bay, so to speak, and give the executors an opportunity to sell at a time convenient to themselves. Indeed in a suitable case the court will order that the personal representatives should not assent, to prevent s. 6 from operating, and this is what did happen in *Gorham's* case.

**Self-help by charities**

Even if the personal representatives desire to be relieved of their duties as personal representatives promptly so that it is not practicable to delay the preparation of an assent, the charity concerned will nevertheless be able to help itself in one of two important ways without running into the difficulties of s. 6. In the first place the charity may decide that it desires to occupy the land left to it for its own purposes, in which event it may ask the court or the Charity Commissioners to exercise the powers given to them by s. 8 of the Act and to order the retention (or even the acquisition, where money has been left with a direction that it should be spent in the acquisition of land) of the land by the charity. Such an order may be made only if the court or the Commissioners are satisfied that the land is required "for actual occupation for the purposes of the charity and not as an investment." As this section gives a right of permanent retention, it goes further than s. 5, which merely postpones the date of sale. There is nothing to prevent the charity from seeking an extension of time for sale under s. 5; and neither does there appear to be anything to prevent the personal representatives from seeking an order for retention under s. 8, although this section is more suitably invoked by the charity itself, since it would presumably be the charity alone which could provide evidence as to its need to occupy the land.

In the second place, where a charity is not able to say that it requires the land for its own occupation, but would nevertheless like to keep the land as an investment, there is one way in which it can help itself provided it holds a licence in mortmain or it is entitled in some way to acquire land as an investment, or if it desires to purchase that particular land for any purpose for which as a charity it is permitted to purchase land. In these events it will be at liberty to purchase the land left to it in the exercise of its normal power of purchase and to require the proceeds of sale to be paid over to it by the executors as the legacy left to it. The transaction would take the form of a conveyance from the personal representatives, who would thereby have performed their obligation to sell, and ousted s. 6. There is nothing in the 1891 Act which disqualifies a charity from purchasing land which, under the ordinary law, it is entitled to purchase, merely because that land happens to be left to it by will. The purchase of land can often eliminate most of the difficulties which arise under ss. 5 and 6 where the charity concerned has powers of purchase.

**Parks, museums and schools**

In conclusion it may be mentioned that in addition to the various powers to acquire land by purchase which many charitable organisations possess, a general exception from the 1891 Act is contained in Pt. III of the 1888 Act, and if a testator desires to leave land for parks, museums or schools, he may do so provided he complies with the provisions of the 1888 Act; and any land so left may be retained by the charity.

W. A. L.

## Landlord and Tenant Notebook

# AGE AND UPKEEP

THE unregenerate Scrooge included among his objections to the celebration of Christmas the fact that the occasion reminded him that he was a year older than last time. That was before the days of gerontics (the word was first used, according to the N.E.D., in 1885); it was also before Harman, J., had had occasion to remark, as he did in the course of his judgment in *Phillips* v. *Price* [1958] 3 W.L.R. 616; *ante*, p. 827: "The age of the property has nothing to do with it being unfit for human habitation." And about the same time the Government seems to have had the same idea when it decided to help building societies (whose principles would forbid them from advancing a few shillings on the security of the Tower of London) to help citizens to purchase dwelling-houses erected before the year A.D. 1919.

In disputes between landlord and tenant, the question of the age of a building has often been raised in connection with claims for dilapidations. The decisions may be said to fall into groups. There is one eighteenth century authority, *Ferguson* v. *Anon* (1789), 2 Esp. 589. The facts are not fully stated, but it appears that the defendant had occupied the plaintiff's house under a yearly tenancy, with no express covenants. And Kenyon, C.J., is reported to have said: ". . . in the present case the plaintiff has claimed a sum for putting a new roof on an old worn-out house" and to have disallowed that claim. We do not know when the tenancy began, but may infer that the house was old and worn out at that time.

*Ferguson* v. *Anon* may be said to have set the tone for a series of decisions in the 1830's, most of them decided by Tindal, C.J., who, it may be said, was strongly disposed to construe tenants' repairing covenants in the covenantors' favour.

After he had held in *Harris* v. *Jones* (1832), 1 Moo. & R. 173, that a tenant who had taken a six years' lease of an "old house" was bound only "to keep it up as an old house, not to give the plaintiff the benefit of new work," Tindal, C.J., expressed himself as follows in *Gutteridge* v. *Munyard* (1834), 1 Moo. & R. 334, in which the subject of a covenant was a house which was some two or three hundred years old when it was let, in 1808, for a term of twenty-one years: "Where

a very old building is demised and the lessee enters into a covenant to repair, it is not meant that the old building is to be restored in a renewed form at the end of the term . . . The tenant is bound to take care that the premises do not suffer more than the operation of time and nature would effect; he is bound by seasonable applications of labour to keep the house as nearly as possible in the same condition as when it was demised." And the learned judge went on to deprecate adjudication based on the reports of a surveyor who is "sent in upon the premises for the very purpose of finding fault."

The covenant in the above case was a very stringent one, but allowed, parenthetically, for reasonable wear and tear; Tindal, C.J., however, made no reference at all to its details, and in the next "old house" case, *Stanley* v. *Towgood* (1836), 3 Bing. (N.C.) 4—an action for dilapidations on the termination of a fourteen years' lease—thought that evidence of the state of the premises at the commencement of the term had been wrongly excluded: "I should not have gone to that length." Not long afterwards, in *Mantz* v. *Goring* (1838), 4 Bing. (N.C.) 451, Tindal, C.J., said that it had been "established by *Stanley* v. *Towgood* and other cases that the same nicety of repair is not exacted for an old building as for a new one."

### Keep and put

It was to be expected that these utterances of Tindal, C.J., sometimes somewhat breezy and occasionally verging on the slovenly, would mislead covenantors into thinking that repairing covenants could never oblige them to improve the premises, even by improving their condition. It was Parke, B., who, with a few terse but cogent interjections in *Payne* v. *Haine* (1847), 16 L.J. Ex. 130, shattered this illusion. The covenant sued on was one to keep and deliver up a farm in good and sufficient repair, order and condition, and Platt, B., had directed the jury to consider the state of the premises at the commencement of the tenancy and that the covenant would have been complied with if they were in as good a condition when the tenant left. In opposition to a motion for a new trial, *Gutteridge* v. *Munyard* was relied upon. Parke, B., (i) summarised the effect of that decision as being that if at the commencement of the tenancy the premises were in very bad condition, the covenantor must keep them in repair *as old premises*, (ii) made the point that "keep in good repair" did not mean that the tenant covenantor could keep the premises in bad repair if they happened to be in bad repair at the commencement of the tenancy.

And in *Haldane* v. *Newcomb* (1863), 12 W.R. 135, a direction based on *Payne* v. *Haine* which had been given to a sheriff's jury—they were only to consider evidence given by the defendant's witnesses in so far as it went to show the age, character and class of the buildings, and their general condition, at the time of the grant; the state of the premises when the defendant took possession had nothing to do with the question on the record—correctly stated the law.

### Proudfoot *v.* Hart

And then the well-known authority of *Proudfoot* v. *Hart* (1890), 25 Q.B.D. 42 (C.A.), may be said to have re-stated the law in tidy fashion. The action, which was for dilapidations at the end of the three years' tenancy of a dwelling-house, gave us Lopes, L.J.'s: "'Good tenantable repair' is such repair as, having regard to the age, character, and locality of the house, would make it reasonably fit for the occupation of a reasonably minded tenant of the class who would be likely to take it," approved by Esher, M.R., who went on to say: "The age of the house must be taken into account, because nobody could reasonably expect that a house 200 years old should be in the same condition of repair as a house lately built." His judgment also contained the statement: ". . . the age of the house is very material with respect to the obligation both to keep and to leave it in tenantable repair. It is obvious that the obligation is very different when the house is fifty years older than it was when the tenancy began." The house with which the court was dealing was only three years older than it had been when the tenancy began—and, where the length of term is mentioned, none of the earlier cases had concerned a lease longer than twenty-one years. And one may assume that covenants in long leases were not dealt with in other cases for, if the practice of granting such had begun in Tindal, C.J.'s time, they would not have expired.

### "Repairs not suited"

But what is the position when, as a result of changes in the neighbourhood combined, a different class of tenant with different requirements would be likely to take the house?

Before *Proudfoot* v. *Hart*, this question arose in *Morgan* v. *Hardy* (1886), 17 Q.B.D. 770, decided by Denman, C.J., at first instance. The main issue was a bankruptcy law one, and Denman, C.J.'s views on the effect of an assignee's bankruptcy on his assignor's right to indemnity were not upheld by the Court of Appeal (18 Q.B.D. 646) the (majority) decision of which was affirmed by the House of Lords. But it does not appear that the question of measure of liability for breach of a repairing covenant was discussed in the House of Lords; the report just mentioned of the proceedings in the Court of Appeal is silent on the subject, but that in 35 W.R. 588 shows that that court dealt briefly with the point.

The action was brought at Swansea Assizes for damages for breaches of full repairing covenants contained in a lease of a manor house and farm for fifty-odd years, granted in 1833. The question of amount was referred and the referee reported that the defendants had contended "that the said premises and the surrounding property had greatly diminished in marketable value since the making of the said lease, and that in consequence of such diminution in value a great portion of the repairs mentioned in the plaintiffs' particulars are not suited to the said premises, and were unnecessary for their use and enjoyment, and that therefore the proper measure of damages in the said action is the actual loss to the plaintiffs' reversion . . . and that the damages should be limited to the amount which would be expended by a prudent and reasonable man in repairing the said premises so as to be productive of remuneration . . ." And the referee supplied alternative assessments.

Denman, C.J., rejected the argument advanced for the tenant largely because it would give rise to very difficult and speculative questions, e.g., whether an ornamental pineapple need be replaced; and considered the "such a sum as will put the premises into the state of repair in which the tenant was bound to leave them" rule the one to be applied. And he cited *Rawlings* v. *Morgan* (1865), 18 C.B. (N.S.) 776, in which a landlord was held to be entitled to dilapidations though he had arranged for demolition.

It will have been observed that the effect of changes in the neighbourhood rather than that of the age of the house was in issue in the above case, and it may be for this reason that the decision was not cited in *Proudfoot* v. *Hart* in which, as I have mentioned, Esher, M.R., stressed the age factor considerably. But in *Anstruther-Gough-Calthorpe* v. *McOscar*

[1924] 1 K.B. 716 (C.A.) the contentions were held to be substantially the same.

### The hypothetical tenant

Three newly built houses had, in 1825, been let by George Lord Calthorpe to one N. Stallwood for a term of ninety-five years, and the action was brought in 1920 by a successor in his title, the Hon. Rachel Anstruther-Gough-Calthorpe, against Laura McOscar. A repairing covenant in the lease may be said to have reflected the accumulated experience of centuries. It is not necessary to set out at length, but for my purposes I would mention that it obliged the lessee as often as occasion should require to repair, uphold and to pave and to paint and to scour and clean and keep the three houses *and* all the walls, and the sinks, privies, sewers and drains and *other appurtenances* well and sufficiently repaired; and that it went on to oblige him, at the end of the term, to deliver up the houses so repaired, upheld, etc., together with all marble and other chimney-pieces, jambs and slabs, and locks and keys thereunto belonging, *and* all wainscots, linings, partitions and finishings whatsoever, and all closets, cupboards, dressers, shelves, presses, drawers, pumps, pipes and other fixtures fixed or fastened to the said buildings and premises *or* which should be found thereon or any part thereof during the last seven years of the term. (I have omitted many verbs and items; and the italics are, of course, mine.)

The buildings had not grown old gracefully; and, despite the propinquity of Gray's Inn with its large and lovely garden, the neighbourhood had so changed that it was said the tenants likely to occupy the premises would only take the houses separately or only part of a house for short terms, on weekly, monthly, or quarterly tenancies, and would not accept any repairing obligations, and that the requirements of reasonably minded tenants of this class would not include many repairs which were needful and necessary for the repair and maintenance of the property. And an arbitrator from Little College Street prepared two sets of figures, one on the basis of "without limitation to such repairs as which were needful and necessary" (which came to £586), the other on the basis of reasonably minded tenants likely to take the houses (£220).

Subsequently the Court of Appeal asked for elaboration, and the arbitrator reported that the difference was chiefly due to items of outside and structural repair, and that the only reason why he had awarded anything at all in his second estimate was that local authorities had the power to order the repairs included to be done. "The brickwork of a house may be very bad, and yet the renewal of the pointing needful and necessary for the maintenance of the structure, so that it may be expected to last its normal life if properly kept in repair, may be deferred for many years before the house becomes 'untenantable,' or before the need of it would be even noticed by a tenant who had no repairing liability."

McCardie, J., was held to have misapplied the Lopesian test. Atkin, L.J., would have liked to have pronounced a death sentence on the hypothetical tenant of the class, etc. Bankes, L.J., and Scrutton, L.J., were content to limit his future appearances to short tenancy cases.

### Normal life

Whether the authority of *Anstruther-Gough-Calthorpe* v. *McOscar* has been affected by the Landlord and Tenant Act, 1927, s. 18 (1) (which disposed of *Rawlings* v. *Morgan*), is a question on which, as was mentioned in this Notebook on 24th May last (*ante*, p. 376), there is much disagreement. It is worth drawing attention to the fact that age was taken into consideration by the referee when computing the higher figure. The above cited observations about normal life preceded a summary in which he reported: "(1) The higher sum in my award is the cost of doing all the needful and necessary acts well and sufficiently to repair, etc., the premises in the words of the covenant, which I took generally to mean the cost of putting the premises (*a*) into such condition as I should have expected to find them in had they been managed by a reasonably minded owner, having full regard to the *age* of the buildings, the locality, the class of tenant likely to occupy them, and the maintenance of the property in such a way that only an average amount of annual repair would be necessary in the future; or (*b*) in such state of repair as would satisfy the requirements of reasonably minded persons who would be prepared to take on lease the houses either singly or as a block upon similar repairing covenants to those contained in the expired lease and on such conditions as to rent as would presume the premises being put at the commencement of the term free of expense to the lessee in such a state of good and sufficient repair as would render only an average amount of annual expenditure necessary during the term. (2) The lower sum is my estimate of the cost of such repairs as would satisfy the literal requirements of reasonably minded tenants of the class now likely to occupy the premises . . ."

It is not easy to say whether the referee, when making the award under (1), which was finally upheld, actually had in mind a 1920 lessee with 1825 requirements; nor do the judgments clearly decide this point. Scrutton, L.J., was somewhat vehement when holding that the standard of repair could not vary from time to time; and the inclusion of "age" as a factor might be by way of insistence on the fact that the houses had been new when let. But I think that, on this question of age, the references to "normal life" and to "average amount of annual expenditure" enable us to extract a rule.

### Preservation of assets

I would suggest that these references, and the fact that the difference between the two estimates was mainly accounted for by external and structural dilapidation, shows that the court had in mind the fact that the houses were a capital asset belonging to the lessor and that it was the lessee's duty under the covenants to prevent the decay and destruction of that asset. For when examining the meaning of "repair" itself, Atkin, L.J., quoted with approval Buckley, L.J.'s judgment in *Lurcott* v. *Wakely and Wheeler* [1911] 1 K.B. 905 (C.A.), including the passage: "Time must be taken into account; an old article is not to be made new; but, so far as repair can make good, or protect against the ravages of time and the elements, it must be undertaken."

And, while I do not know how much the report went into detail, presumably Tindal, C.J.'s observations in *Gutteridge* v. *Munyard*—which were recently approved in *Brown* v. *Davies* [1958] 1 K.B. 117 (C.A.)—were respected, covenants being construed, as Willes, J., said, they should be in *Scales* v. *Lawrence* (1860), 2 F. & F. 289, "on the principle of 'give and take'." I hardly think that much was heard about the marble chimney pieces, the presses, the pumps and other pre-Victorian features; that there was any complaint if gas and/or electricity had been installed; or that the Hon. Rachel Anstruther-Gough-Calthorpe expected Laura McOscar to hand her the very keys which George Lord Calthorpe had handed to N. Stallwood in 1825.

R. B.

# RATING RELIEF FOR CHARITIES

MANY decisions on s. 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, granting partial relief from rates for charitable and certain other organisations, have been handed down since the review of similar cases published in our issue of 14th December, 1957 (101 SOL. J. 941). During the ensuing year there have also been some reported cases under s. 7 of the same Act which grants relief from rates for places of religious worship, and recently there has been one case reported of an appeal made under s. 9 (1) of the 1955 Act in respect of a garage used to accommodate a car adapted for use by a disabled person. The cases reported under ss. 7 and 9, as well as those under s. 8, can be regarded as falling within the legal meaning of the term "charity" as laid down by the Statute of Elizabeth I (43 Eliz. I, c. 4 (1601)) and as expounded by Lord MacNaghten in the famous case of *Income Tax Special Purposes Commissioners* v. *Pemsel* [1891] A.C. 531 (H.L.).

### Cases falling within s. 8 (1) (a)

The partial rating relief granted by s. 8 (2) of the 1955 Act, which is related to the amount of rates paid in 1955–56, is applicable to "any hereditament occupied for the purposes of an organisation (whether corporate or unincorporate) which is not established or conducted for profit and whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare" (s. 8 (1) (*a*)).

*Royal College of Nursing*

In *Royal College of Nursing* v. *St. Marylebone Metropolitan Borough Council* (1958), 51 R. & I.T. 5; p. 71, *ante*, the Divisional Court of the Queen's Bench Division dismissed the appeal, by case stated, of the rating authority against the decision of the London Quarter Sessions allowing the Royal College relief under s. 8 (1) (*a*) in respect of its hall, offices and premises in London.

Quarter sessions found that the two main objects of the Royal College of Nursing were (1) "to promote the science and art of nursing and the better education and training of nurses and their efficiency in the profession of nursing" and (2) "to promote the advance of nursing as a profession in all or any of its branches."

The rating authority contended that object (2) was neither charitable nor concerned with the advancement of social welfare. It was pointed out that a publication of the Royal College of Nursing entitled "Observations and Objectives" stated:—

> "Conditions of Service: the Royal College of Nursing, the largest and most representative professional organisation for nurses, takes a leading part in obtaining for them good economic and social conditions. It does so in the spirit of its royal charter: 'to promote the advance of nursing as a profession in all or any of its branches' . . . The college takes a leading part in obtaining good and equitable working conditions for the profession, both in the interests of nurses themselves and their service to the community."

On behalf of the Royal College it was submitted that the purpose stated in object (1) of the charter was the main object of the college and that the other purposes were ancillary thereto, and that the main objects of the college were charitable or were otherwise concerned with the advancement of social welfare.

The Divisional Court held that the college was entitled to partial relief from rates under s. 8 (2) since the objects held to be the two main objects by quarter sessions were charitable within the meaning of s. 8 (1), object (2) being directed to the advance of nursing and not to the advance of the professional interests of nurses, because—

> (i) to advance nursing as a profession meant to improve the quality and range of the services which nurses gave and so to enhance the stature and importance of the nursing profession and the esteem in which it was held, and any improvements in pay and conditions obtained for this purpose would be means of achieving this and not ends in themselves; and
>
> (ii) in resolving any ambiguity in object (2), important factors were the fact that the college gave full-time education in nursing and was not called into being to protect and improve the pay and working conditions of members and the finding of quarter sessions that its activities were directed to raising the standard of nursing rather than the promoting of the interests of nurses and as an end in itself; and
>
> (iii) the activities of the college were consistent with its pursuing either charitable or professional purposes, since the work of looking after nurses' conditions of work was bound to be done whether the object was the advancement of their professional interests or the advancement of nursing as an art.

This case should be contrasted with that of *General Nursing Council for England and Wales* v. *St. Marylebone Metropolitan Borough Council* (1957), 50 R. & I.T. 818; 101 SOL. J. 973, considered below.

*Miners' holiday centre*

*Derbyshire Miners' Welfare Committee* v. *Skegness Urban District Council* (1957), 50 R. & I.T. 803 (C.A.); 101 SOL. J. 973, concerned an application for relief under s. 8 (2) in respect of a holiday centre for the use and benefit of workers in or about coal mines, particularly those resident in Derbyshire. The centre had been provided from a sum of money made available by the National Coal Board to the Coal Industry Social Welfare Organisation under the Miners' Welfare Act, 1952. The Derbyshire District Miners' Welfare Committee granted a lease of the holiday centre to trustees appointed to administer the fund on specified trusts, viz., to permit the centre to be used as a holiday centre and recreation and pleasure ground for the benefit of workers in or about coal mines employed in the Derbyshire district, and their dependants and invitees. The trustees were required to assess the payments from persons using the accommodation, facilities and benefits at a figure estimated to produce such a surplus on running costs as would provide a sufficient reserve for depreciation of the centre and for repairs and renewals. The trustees sought to make neither a profit nor a loss.

The Court of Appeal dismissed the rating authority's appeal against the order of the Divisional Court and held that the trustees were entitled to relief from rates in respect of the centre under s. 8 (2) because (1) carrying on a holiday camp on premises provided otherwise than by those entitled to benefit at a cost of £35,000 so that holidays might be enjoyed at a cost not greater than that of running the camp, and providing for the upkeep, involved being concerned with the advancement of social welfare which included the provision

of such an amenity to improve the lot of those entitled to benefit by it; and (2) the persons benefited formed a sufficiently substantial part of the community, measured by commonsense standards, to fulfil the implication of the word "social" in the expression "social welfare."

*Working men's club*

The appeal of the ratepayers in *Working Men's Club and Institute Union, Ltd.* v. *Swansea County Borough Council* (1958), 51 R. & I.T. 714; p. 858, *ante*, against a decision of the deputy Recorder of Swansea County Borough was allowed by the Divisional Court of the Queen's Bench (one of the three judges dissenting). This case concerned the assessment made on a convalescent home belonging to the Working Men's Union. The objects of the club, incorporated under the Industrial and Provident Societies Act, 1876, were "to carry on the business of general advisers, teachers of the doctrine of association for social or ameliorative purposes, publishers, stationers and booksellers, general traders, agents and manufacturers, both wholesale and retail, of any article which may assist the development of clubs or their members: to provide and maintain convalescent homes, or other institutions for the benefit of the members or wives or children or dependants of the members of clubs which are members of the union: the union shall have full power to do all things necessary, expedient, or considered by it desirable for the welfare and protection or assistance of, or helpful in any manner to, its members, and for the accomplishment of all objects specified in its rules."

Relief under s. 8 (2) was granted because the court held that the union's objects were concerned with advancement of social welfare within the meaning of s. 8 (1) (*a*), since (1) those objects were the written objects read in the light of its history unaffected by activities, since there was no ambiguity in them and the main object was clearly the first part of the first clause (the remainder being means for carrying it out), and (2) that main object was to encourage working men to form working men's clubs with the incidental object of assisting clubs formed and it was not affected by the greater attention to assistance through the success in getting clubs formed or by the fact that the union had become self-supporting, and it constituted the advancement of social welfare.

*Zoological society*

A zoological society whose main objects were "to take over . . . and conduct as a scientific and educational organisation" certain zoological gardens; "to promote, facilitate and encourage the study of biology, zoology and animal physiology, aviculture, aquaria, ichthyology, entomology, botany and horticulture and all kindred sciences and to foster . . . knowledge of animal life; to establish, equip and carry on, and develop zoological parks or gardens and living zoological collections . . ."; and "to establish sanctuaries for all kinds of wild life . . ." was held to fall within s. 8 (1) (*a*) by the Chancery Division in *North of England Zoological Society* v. *Chester Rural District Council* (1958), 51 R. & I.T. 762; p. 915, *post*. Many other objects were included in the society's memorandum but it was held that its main objects, meaning real objects as distinguished from ancillary powers, were those quoted above, the other objects being ancillary powers. Amongst the latter were provisions for public meetings, publishing books, investing moneys, engaging bands and orchestras, building and equipping restaurants and other buildings for the convenience of visitors and raising funds. Visitors had to pay for admission to the zoological gardens and a surplus was derived from the takings of cafés catering only for visitors to the gardens. All surpluses were spent on the society's zoological property in accordance with a clause in its memorandum prohibiting a distribution among members. The court held further that its main objects were charitable, and were in any event "otherwise concerned with the advancement of education," and that the society was not established or conducted for profit.

**Cases not falling within s. 8 (1) (a)**

During the period under review no less than seven decisions have been reported in respect of bodies held to fall outside s. 8 (1) (*a*), and in a further case it was held that relief was available not under s. 8 but under s. 7.

*General Nursing Council*

In *General Nursing Council for England and Wales* v. *St. Marylebone Metropolitan Borough Council* (1957), 50 R. & I.T. 818; 101 SOL. J. 973, the Court of Appeal allowed the rating authority's appeal against an order of the Chancery Division of the High Court determining that the council was an organisation within s. 8 (1) (*a*) thus being entitled to partial relief from rates under s. 8 (2).

Under the Nurses Act, 1957, the General Nursing Council for England and Wales is required to maintain a register of nurses and a roll of assistant nurses, to regulate the conditions of admission to and removal from the register and the roll, and in connection therewith to exercise supervisory and directing powers in regard to training and examinations, with ancillary powers and duties. Its income is derived in part from fees which it is authorised to charge on applications for examination and registration or enrolment, etc., and from moneys directly or indirectly provided by Parliament. Under the Act, only persons whose names are on the council's register are entitled to call themselves nurses or to wear the distinctive uniform of nurses.

The Court of Appeal held that the main objects of the council were not only "concerned with" the advancement of social welfare within s. 8 (1) (*a*) since (1) being "concerned with" meant, not merely related to, connected with or "mixed up" with, but directed to, so that social welfare should be "the concern of" the main objects; and (2) the maintenance of the register of nurses had two inseparable results, namely, the enhancement of the qualities and status of nurses and the benefit and protection of the public, particularly the sick, and nurses' work was not confined exclusively to welfare work. In the course of the judgment of the court, Lord Evershed, M.R., indicated a desirable limitation to be put upon "social welfare," namely, that the phrase involves, at any rate, the conception of what used to be called "good works"; the notion of things that, as a matter of social obligation, ought to be done for the benefit of those in the community whose living conditions in those respects are inadequate. This was suggested as an indication why, in the court's judgment, the advancement of social welfare ought not to be equated with the promotion, generally, of the well-being in every sense and of every kind, of society or sections of society; why, therefore, everything which can be shown to tend to the public advantage cannot, for the purposes of the section, be treated as concerned with the advancement of social welfare; and why, more particularly, the General Nursing Council could not succeed in bringing itself within the section.

*Friendly society*

In *Trustees of the National Deposit Friendly Society* v. *Skegness Urban District Council* (1958), 51 R. & I.T. 474; p. 526, *ante*, the House of Lords held that the friendly society fell outside s. 8 (1) (*a*) because (1) although it was not an organisation established or conducted for profit within s. 8 (1) (*a*), its objects being to provide benefits for its members as protection against the chances of life and not to make profits despite its very large investments, yet (2) its main objects being to provide benefits for its members only, they lacked the element of being for the public good which was requisite to bring them within "advancement" of social welfare in s. 8 (1) (*a*).

It is noteworthy that although the friendly society concerned pursued its case as far as the House of Lords, at no stage in the judicial proceedings—before quarter sessions, the Queen's Bench Divisional Court and the Court of Appeal, did the friendly society succeed with its submissions.

This last case was applied by the Court of Appeal in *Independent Order of Oddfellows Manchester Unity Friendly Society* v. *Manchester City Council* (1958), 51 R. & I.T. 729; p. 857, *ante*. In that case members of the friendly society were contractually entitled to benefits calculated actuarially on the amounts of their contributions subject to due payment of such contributions. Under the objects and rules, any surplus after payment of such benefits was used to provide discretionary benefits to members and their families in cases of hardship or need by augmenting the contractual benefits by making payments to them of a purely personal nature. The court held that the society fell outside s. 8 (1) (*a*), since, although an object of the society was the benevolent and discretionary succour to members and their families according to need, the main objects were the mutual insurance of members and the benefits to which they were entitled as of right, which were not the advancement of social welfare, notwithstanding the extension to families and power to exceed the contractual minima.

*British Legion branch*

In *Butcher* v. *Cambridge City Council* (1958), 51 R. & I.T. 697, the Chancery Division of the High Court ruled that a branch of the British Legion was not occupied for the purposes of the branch within s. 8 (1) (*a*) because, although the branch was an organisation within that clause, its purposes were, so far as reasonably applicable to a branch, the activities authorised by the objects of the British Legion confined territorially to the area allocated to the branch, and those purposes were not coincidental with the trusts of the conveyance which constituted the purposes of the occupation of the hereditament under s. 8 (1) (*a*).

*Mechanics institution*

The Nottingham Mechanics Institution has been held to fall outside s. 8 (1) (*a*) by the Divisional Court in *Nottingham Mechanics Institution* v. *Nottingham City Council* (1958), 51 R. & I.T. 681. The main object of this institution under its private Act of 1912 was "to promote . . . the moral social and intellectual improvement of the members of the institution and other persons in the City of Nottingham and the immediate vicinity thereof." It was held that the institution did not come within s. 8 (1) (*a*) on the grounds that although to promote moral and intellectual improvement was a charitable object, to promote social improvement was not "charitable or otherwise concerned with the advancement of . . . social welfare," for it was too vague and its whole range of prescribed facilities or activities permitted uses of the hereditament which were not charitable or for the advancement of social welfare; and the persons to be benefited were too narrow, as they were confined to members and other selected persons and did not extend to all persons of the City of Nottingham.

*Guinness Trust*

In *Guinness Trust (London Fund) Founded 1890* v. *West Ham County Borough Council* (1958), 51 R. & I.T. 314; p. 364, *ante*, the Divisional Court ruled that although the Guinness Trust was not established for profit, it was conducted for profit within s. 8 (1) because it was directed to make profits and did make profits. This was so although the profits had to be applied for the organisation's purposes which included assisting individuals to improve their condition, without placing them in the position of being the recipients of a bounty; the point was that the profits were not merely incidental to those purposes and the destination for any profits made was immaterial. This case provides authority for the proposition that to comply with s. 8 (1), an organisation must be neither established nor conducted for profit.

*Theosophical society*

Although the first object of the Theosophical Society in England was "to form a nucleus of the universal brotherhood of humanity without distinction of race, creed, sex, caste or colour," in *Berry* v. *St. Marylebone Metropolitan Borough Council* (1957), 50 R. & I.T. 821; 101 SOL. J. 973, the Court of Appeal held that the society was not eligible for rate relief under s. 8 (2) as its first object was not exclusively concerned with the advancement of religion, education or social welfare within s. 8 (1) (*a*). This was because the teaching of the fatherhood of God and of the corresponding brotherhood of humanity without the distinction of creed was the teaching of a doctrine of a philosophical or metaphysical conception rather than the advancement of religion, which connoted positive steps to sustain and increase religious belief by pastoral and missionary ways. Further, the teaching of the theosophical doctrine, which was the only teaching involved in that object, was not the advancement of education which meant its advancement for its own sake in order that the mind might be trained, and the object was so wide that within it lay many activities which did not promote the welfare of the community in a social sense and would be wholly outside the phrase "social welfare."

*Church mission hall*

The last-mentioned case should be contrasted with that of *Trustees of West London Mission of the Methodist Church* v. *Holborn Metropolitan Borough Council* (1958), 51 R. & I.T. 297, where the Divisional Court decided that the Kingsway Hall (including Wesley House) was excluded from s. 8 (1) relief, by virtue of the proviso to that subsection, because it was a place "of public religious worship" and a "church hall, chapel hall or similar building used in connection with . . . such place of public religious worship" within s. 7 (2) of the Act, and the mission was entitled to the relief afforded by that section. The mission sought to escape from the application of s. 7 because subs. (3) of that section deals with a hereditament of which part is let at a profit which was the situation in this case.

**Decisions under s. 7 of the 1955 Act**

Apart from the *West London Mission* case, to which s. 7 was relevant, two cases have been decided under s. 7 during the period under review. In *Ninth Church of Christ, Scientist*

[*continued on p. 906*]

**Ada Cole Memorial Stables,** 5 Bloomsbury Square, W.C.1. Help urgently needed for the rescue of aged, unfit and ill-treated horses, ponies and donkeys.

**Army Benevolent Fund,** 20 Grosvenor Place, London, S.W.1. Instituted to secure more efficient aid and support for military charities. Nearly £2,500,000 has already been allocated in grants to these funds.

**Bible Lands Mission Aid Society, The,** 230AE Coastal Chambers, 172 Buckingham Palace Road, S.W.1. The only society supporting missionary and relief work in the lands of the Bible. Missions receive grants : special funds are opened for victims of earthquake and similar catastrophes in the lands of the Bible.

**Bow Mission,** 3 Merchant Street, London, E.3. Maintains a Home of Rest for sick, convalescent and needy old folk. Work includes provision of Christmas cheer, country holidays for children and old folk.

**British and Foreign Bible Society,** 146 Queen Victoria Street, London, E.C.4. Exists for the wider circulation of the Holy Scriptures without note or comment. In this enterprise it unites Christians of almost every communion.

**British Deaf and Dumb Association,** 21 Queen Street, Paisley. Maintains a home for the aged and infirm deaf and dumb ; provides financial assistance for those in need and also for missions and welfare societies.

**British Diabetic Association, The,** 152 Harley Street, London, W.1. Money is urgently needed for diabetic research and for helping elderly and child diabetics. Please assist the British Diabetic Association in this good work.

**British Empire Cancer Campaign,** 11 Grosvenor Crescent, S.W.1. To co-ordinate, initiate and finance cancer research by approved bodies and individual workers.

**British Home and Hospital for Incurables,** Streatham, S.W.16. Provides the benefits of home life and treatment to 100 incurable invalids at Streatham, and also provides life pensions for 100 others able to be with friends or relatives.

**British Legion,** Pall Mall, London, S.W.1. Finances the British Legion's welfare, benevolent and rehabilitation work among ex-Servicemen and women of ALL ranks, ALL Services, ALL wars, and their dependants.

**British Limbless Ex-Service Men's Association,** 31 Pembroke Road, London, W.8. Provides assistance to all limbless ex-Service men in all matters connected with welfare and employment.

**British Red Cross Society,** 14 Grosvenor Crescent, London, S.W.1. Part of a world wide organisation which has over 105,000,000 members in 74 countries. Takes no account of race, creed or political consideration; it is a power for good in a troubled world.

**British Sailors' Society,** 680 Commercial Road, London, E.14. Maintains Residential Clubs and Canteens in ports around coasts of United Kingdom and Eire, and overseas. Assistance for sailors and families.

**British Union for the Abolition of Vivisection, Inc.,** 47 Whitehall, S.W.1. To obtain the prohibition of all experiments upon living animals now being performed under the Cruelty to Animals Act, 1876.

**Caxton Convalescent Home,** 1 Gough Square, London, E.C.4. For men and women over 15. The only Convalescent Home for the Printing and Kindred Trades situated at Limpsfield, Surrey.

**Central Council for the Care of Cripples,** 34 Eccleston Square, London, S.W.1. A national voluntary organisation founded to protect the interests of all who are crippled.

**Charterhouse Rheumatism Clinic,** 54/60 Weymouth Street, London, W.1, and Gants Hill, Ilford, and Birdhurst Road, South Croydon. Diagnosis and treatment, the welfare of the patients and research. Patients pay according to their means. Relies on donations and legacies to cover loss.

**Children's Aid Society,** 55(F) Leigham Court Road, London, S.W.16. Seeks to give a chance in life to the neglected and unwanted child. The society is doing important and far-reaching work in placing children in happy homes.

**Children's Special Service Mission and The Scripture Union,** 5 Wigmore Street, W.1. For nearly a century, and through many activities at home and overseas, has fostered the habit of daily Bible reading and led children and young people in a firm personal faith in Christ.

**Christian Action,** 2 Amen Court, E.C.4. Exists to stimulate Christians of all denominations, and others who respect the teaching of Christ, to understand the bearing of the Gospel principles on the problems of society, and then, both individually and corporately, to work for the application of those principles in local, national and international life.

**Church Army,** 55 Bryanston Street, London, W.1. Carries on a great programme of evangelistic and social work which meets almost every phase of human need from babyhood to old age.

**Church Missionary Society,** 6 Salisbury Square, London, E.C.4. Carries the Gospel to the non-Christian world. Helps to spread Christian education in Africa and the East. Is the largest medical missionary venture.

**Church of England Soldiers', Sailors' and Airmen's Clubs,** 537 Grand Buildings, Trafalgar Square, W.C.2. Provide refreshments, comforts, recreation and rest to all denominations of the three Services, overseas and in garrisons at home. Funds urgently needed for new clubs.

**Clapton Methodist Mission,** 65 Elderfield Road, London, E.5. Provides holiday accommodation for old-age pensioners, convalescents and children from East London.

**Clergy Orphan Corporation,** 5 Verulam Buildings, Gray's Inn, W.C.1. Founded over 200 years ago to maintain, educate and clothe fatherless children of the clergy of the Church of England and the Church in Wales.

**Commonwealth and Continental Church Society,** 13 Victoria Street, S.W.1. Exists for the purpose of supplying the ministrations of the Church to our fellow-countrymen abroad, especially in pioneer parts of the Empire, including Western Canada, Australasia, British East and West Africa, and India.

**Council of Justice to Animals and Humane Slaughter Association,** 42 Old Bond Street, W.1. Promotion of humane methods of slaughter. Introduction of reforms in slaughter-houses and cattle markets.

**Cripples Help Society (Manchester, Salford and North-West England),** 5 Cross Street, Manchester, 2. A voluntary society engaged in work for the welfare of the physically handicapped and disabled.

**Distressed Gentlefolk's Aid Association,** 10 Knaresborough Place, London, S.W.5. For the relief of British gentlepeople in distress. Makes weekly grants to over 300 pensioners, mostly aged and infirm.

**Dockland Settlements;** (H.Q. office) 164 Romford Road, Stratford, E.15. A voluntary organisation concerned with the mental, physical and spiritual welfare of those living in the Dock areas. Undertakes educational, recreational and religious activities, and organises clubs for all ages and both sexes, from young children and adolescents to Old Age Pensioners. Holiday Home for the needy at Herne Bay, Kent.

**Dr. Barnardo's Homes,** Barnardo House, Stepney Causeway, London, E.1. Supports 7,000 boys and girls. Over 141,000 children rescued in 86 years. No destitute child ever refused admission.

**East End Mission,** 583 Commercial Road, Stepney, London, E.1. Evangelistic and social work conducted from 7 centres; with hostel for nearly 40 young people, holiday home at Westcliff-on-Sea, and country playing fields at Lambourne End, Essex.

**Empire Rheumatism Council,** Faraday House (N.4), Charing Cross Road, W.C.2. To organise research into the causes and means of treatment of rheumatism, arthritis, fibrositis and allied diseases.

**Ex-Services Mental Welfare Society,** 37–39 Thurloe Street, London, S.W.7. The *only* voluntary *specialist* organisation supplementing the work of the State, exclusively for men and women of H.M. Forces.

**Family Welfare Association,** 296 Vauxhall Bridge Road, S.W.1. Provides a service of advice and guidance in personal and family problems. Initiates and conducts research in social problems, particularly affecting family life.

**Fellowship Houses Trust,** Clock House, Byfleet, Surrey. A Charitable Trust and Housing Association founded in 1937 to provide guest houses and flatlets for aged people of both sexes including married couples of low income.

**Florence Nightingale Hospital,** 19 Lisson Grove, London, N.W.1. Provides medical and surgical treatment for ladies of limited means and those of the professional classes. The hospital is neither controlled nor supported by the State.

**Forces Help Society and Lord Roberts Workshops,** 122 Brompton Road, London, S.W.3. To help men and women of the Navy, Army and Air Force during their service in Her Majesty's Forces, and after their discharge.

**Friend of the Clergy Corporation,** 15 Henrietta Street, London, W.C.2. Provides permanent pensions for elderly widows and orphan maiden daughters of the clergy in straitened circumstances.

# CHARITABLE

## WHICH MAKE THEIR

**Friends of the Poor & Gentlefolk's Help,** 42 Ebury Street, London, S.W.1. Assistance given to all classes in distress. Gentlefolk's Help provides Homes for elderly gentlepeople and gives pensions.

**Gardeners Royal Benevolent Institution, The,** 92 Victoria Street, S.W.1. Founded in 1839. Assists gardeners whose earnings cease from old age, infirmity or illness. Help is given where it is found impossible to continue living in their own homes.

**Gentlewomen's Work and Help Society (Inc.),** 1 Ridgefield, King Street, Manchester, 2. Helps gentlewomen of all ages resident in all parts of the British Isles.

**Greater London Fund for the Blind (incorporating United Appeal for the Blind),** 2 Wyndham Place, London, W.1. The central organisation in London raising money for societies and associations engaging in services to the civilian blind.

**Grenfell Association of Great Britain and Ireland,** 66 Victoria Street, S.W.1. Sixty-five years ago Wilfred Grenfell discovered that no medical or social service existed for the fishermen living along the remote and sub-arctic coast of Labrador and Northern Newfoundland. He spent forty-three years among the fishermen and to-day the Mission maintains 4 hospitals and a sanatorium, 8 nursing stations, 1 children's home, 2 boarding schools, 1 day school, 1 supply vessel, 2 hospital ships and agricultural and Grenfell industries at all stations.

**Guide Dogs for the Blind Association,** 81 Piccadilly, London, W.1. The only organisation in Britain which trains and provides dogs to guide blind people. It is training with guide dogs men blinded in the War, and has a long waiting list of civilian blind, both men and women.

**Guild of Aid for Gentlepeople,** 86A Eccleston Square, London, S.W.1. Gives help by regular allowances, and in emergencies, to men and women of gentle birth, too old or too infirm to support themselves.

**Haemophilia Society, The,** 94 Southwark Bridge Road, London, S.E.1. To provide a fellowship for haemophilics, to give advice on their problems and to safeguard their social and economic interests. To promote the study of the causes and treatment of haemophilia and similar conditions.

**Home of Rest for Horses,** Westcroft Stables, Boreham Wood, Herts. To enable the poorer classes to procure rest and skilled treatment for their ponies and donkeys when such care is needed.

**Homes for Working Boys in London,** 15 Champion Hill, S.E.5. Homes in the charge of wardens and matrons maintained for homeless boys, 15 to 18 years of age, from all parts of the country, in work or requiring work in London.

**Hostel of God, The,** Clapham Common, S.W.4. Seventy-five beds. The sole purpose of this independent hospital is the care (without charge) of those who are in the very last stages of a fatal disease (97% cancer).

**Imperial Cancer Research Fund,** Royal College of Surgeons of England, Lincoln's Inn Fields, London, W.C.2. A centre for research and information on cancer, and carries on continuous and systematic investigations.

**Institute of Cancer Research: Royal Cancer Hospital,** Fulham Road, London, S.W.3. Intensive research is carried out in the Institute's own laboratories. The Institute is not nationalised and can accept legacies.

**J.N.F. Charitable Trust,** 65 Southampton Row, W.C.1. Promotes charitable objects in ISRAEL and in particular, helps to settle Jewish refugees in the land of Israel.

**John Groom's Crippleage,** 37 Sekforde Street, London, E.C.1. Trains and employs crippled women and girls in high-class artificial flower making. Accommodation provided in homely hostels.

**King Edward's Hospital Fund,** 34 King Street, London, E.C.2. Not directly affected by the National Health Service Act. It can assist new developments of great promise not included in Health Service.

**League Against Cruel Sports, The,** 58 Maddox Street, London, W.1. The leading society which campaigns for better treatment for wild animals.

**London Association for the Blind,** 88/92 Peckham Road, London, S.E.15. A Voluntary Organisation helping the blind in both London and the Provinces. Training and employment ; homes and hostels ; self-contained flats ; benevolent and pensions Fund.

**London City Mission,** 6 Eccleston Street, London, S.W.1. Maintains 200 missionaries in door-to-door visitations, etc. Mission Halls in many parts of London. Has holiday home for its own workers.

**London Police Court Mission,** 2 Hobart Place, London, S.W.1. Provides a home and a hostel for boys on probation, a similar hostel for girls on probation and a home for children who have been ill-treated or criminally assaulted. It is also responsible for an approved school for boys and one for girls, a hostel for candidates in training for the Probation Service and an assistance department.

**London Solicitors and Families Association, The,** 25 Queensmere Road, London, S.W.19. Financial relief for necessitous members and their families and dependent relatives of deceased members, and necessitous solicitors not members.

**Lord Mayor Treloar College,** Froyle, Alton, Hants. Founded in 1908 "to do something permanently to benefit the little cripples of the metropolis of London," now provides education and/or a trade training to disabled boys from all over the United Kingdom.

**Mental Health National Appeal,** 39 Queen Anne Street, London, W.1. Devotes its entire proceeds to advance the work of the National Association for Mental Health and the Mental Health Research Fund in alleviation and prevention of mental illness and deficiency.

**Methodist Homes for the Aged,** 1 Central Buildings, London, S.W.1. Maintains 11 large Methodist Homes which are homes in the warmest and fullest sense of the word. Present accommodation is for 250 residents.

**Methodist Missionary Society,** 25 Marylebone Road, London, N.W.1. Founded 1786. For the work of world Evangelism through preaching, teaching and healing.

**Miss Sheppard's Annuitants' Homes,** 12 Lansdowne Walk, London, W.11. To give a real home to gentlewomen in good health, aged 60 to 75 on entry, with small assured incomes.

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**Miss Smallwood's Society,** Lancaster House, Malvern. Assists ladies in poor circumstances without distinction of creed, by monthly pensions. Has monthly pension list of over 390. Gives grants in deserving cases.

**Mission to Lepers,** 7 Bloomsbury Square, London, W.C.1. Has 117 centres for sufferers from leprosy and healthy children of leper parents. Provides Christian teaching at several public leprosy centres.

**Missions to Seamen,** 4 Buckingham Palace Gardens, London, S.W.1. Maintains 85 stations at home and overseas with port staff. Institutes and launches. All seamen welcomed.

**Moravian Missions,** 32 Great Ormond Street, London, W.C.1. Oldest to heathen, first to Jews, first to send out medical missionaries, first to lepers.

# GANISATIONS

## LS IN THIS JOURNAL

**Multiple Sclerosis Society,** 10 Stratford Road, London, W.8. The objects of the society are to co-operate with the medical profession in the encouragement of scientific research into the cause and cure of Multiple (Disseminated) Sclerosis; and to promote the mutual help, comradeship and welfare of Multiple Sclerosis patients. The society has branches in many parts of the country, and in Scotland and Northern Ireland.

**Musicians' Benevolent Fund,** St. Cecilia's House, 7 Carlos Place, London, W.1. Disburses thousands of pounds annually to unemployed, sick and aged professional musicians. Also maintains a beautiful convalescent Home at Westgate-on-Sea, Kent.

**National Association of Boys Clubs,** 17 Bedford Square, London, W.C.1. A voluntary organisation which helps boys to become decent men by means of the Club Method. Imaginative courses provided for adult leaders, helpers and boys.

**National Association of Discharged Prisoners' Aid Societies (Inc.),** 66 Eccleston Square, London, S.W.1. Promotes co-operation amongst certified D.P.A. Societies. Administers private gifts for special cases.

**National Association for the Paralysed,** 1 York Street, Baker Street, London, W.1. To promote and further the interests of the paralysed by passing on information essential to their well-being, including technical information, suggestions as to the best means of overcoming particular disabilities, and advice on benefits and help available from Government Departments, local authorities and voluntary organisations.

**National Association for the Prevention of Tuberculosis,** Tavistock House North, Tavistock Square, London, W.C.1. A voluntary body seeking to prevent and control tuberculosis and diseases of the chest and heart by research, education and propaganda.

**National Canine Defence League,** 10 Seymour Street, London, W.1. Maintains animal clinics with full hospital service. Provides homes for unwanted dogs, veterinary aid for working sheepdogs, dog licences for the blind, disabled and aged.

**National Children's Home,** Highbury Park, London, N.5. Helps children deprived of a normal home life. Forty branches. Over 3,000 girls and boys cared for and nearly 36,000 benefited.

**National Library for the Blind,** 35 Gt. Smith Street, London, S.W.1. The library possesses 289,985 volumes in embossed type and is free to blind readers. 1,500 volumes issued daily by post.

**National Playing Fields Association, The,** 71 Eccleston Square, London, S.W.1. Since its inauguration in 1925 it has distributed £1,231,765, thus helping to provide playing fields and children's playgrounds for all sections of the community.

**National Society for Cancer Relief,** 47 Victoria Street, London, S.W.1. Assists poor persons suffering from cancer and those needing nursing or other special facilities. Provides blankets, clothing, fuel for patients.

**National Society for the Prevention of Cruelty to Children,** Victory House, Leicester Square, London, W.C.2. Saves children from mental and physical ill-treatment and neglect. The Society also advises and helps parents concerning problems that have arisen in regard to their children's well-being.

**National Spastics Society, The,** 28 Fitzroy Square, London, W.1. The objects of the Society are to promote facilities for the treatment, education and vocational training of spastics, who are crippled as a result of injury to brain tissues before, during or after birth. In order to meet the desperate needs of spastics, among whom there are about 10,000 children, it seeks within the limits of its income to establish clinics, schools and sheltered workshops.

**National Trust for Places of Historic Interest or Natural Beauty,** 42 Queen Anne's Gate, London, S.W.1. Under special Acts acquires and holds inalienably for benefit of nation lands and buildings of interest or beauty. Special obligation to preserve animal and plant life.

**Nurses Memorial to King Edward VII,** 15 Buckingham Street, Strand, London, W.C.2. A voluntary organisation founded in 1912 to provide a home or homes for elderly retired nurses.

**Oxford Committee for Famine Relief,** 17 Broad Street, Oxford. Collects money and clothing and re-distributes where needs are greatest, on a non-sectarian basis. Also accepts effects of any kind for sale in gift shop.

**People's Dispensary for Sick Animals,** P.D.S.A. House, Clifford Street, London, W.1. Established to provide free treatment for sick and injured animals of the poor through its 80 dispensaries, 11 hospitals and 18 caravan dispensaries and 14 ambulances in the United Kingdom and Overseas.

**Pestalozzi Children's Village Trust, The,** Battle, Sussex, is maintaining two British houses in the international Pestalozzi Children's Village at Trogen, Switzerland, and establishing a similar international children's village in this country for needy children from Europe and the Commonwealth.

**Professional Classes Aid Council,** 20 Campden Hill Square, London, W.8. Relief of distress amongst professional classes and their dependants resulting from causes beyond individual control.

**Queen Elizabeth's Training College for the Disabled,** Leatherhead, Surrey. To train physically disabled persons for absorption into normal industry.

**Reedham School,** Purley, Surrey. Maintains and educates 250 needy children. Boys and girls are received at any age between three months and eleven years and retained until sixteen. They are admitted by presentation, purchase or election.

**Reed's School, London Orphan School and Royal British Orphan School,** 32 Queen Victoria Street, London, E.C.4. Boarding school for fatherless children. Secondary Grammar School education.

**Royal Agricultural Benevolent Institution,** Vincent House, Vincent Square, London, S.W.1. The only national organisation for the relief of disabled and aged members of the farming community.

**Royal Air Force Benevolent Fund,** 67 Portland Place, London, W.1. Exists primarily to help those disabled while flying and the dependants of those killed, and specially assists in education of children by trying to give them the education which might reasonably have been provided by their fathers who have been taken from them.

**Royal Association in Aid of the Deaf and Dumb,** 55 Norfolk Square, London, W.2. Not in receipt of State aid. Ministers to the spiritual and material needs of the deaf and dumb.

**Royal College of Surgeons of England,** Lincoln's Inn Fields, London, W.C.2. One of the leading centres of surgical research and study. Is expanding and increasing its programme of research and education.

**Royal Commonwealth Society for the Blind,** 121 Victoria Street, London, S.W.1. Seeks to destroy the sources of blindness; to provide eye clinics and to care for and educate the blind people of the Colonial Empire.

**Royal Hospital and Home for Incurables,** West Hill, Putney, London, S.W.15. Dependent on voluntary support. 250 patients and pensioners from all parts of the U.K. Books welcomed for library.

**Royal Humane Society,** Watergate House, York Buildings, Adelphi, London, W.C.2. To award persons for gallantry in saving, and attempting to save, life from drowning, etc.

**Royal Merchant Navy School,** Bearwood, Wokingham, Berks. A school for the sons and daughters of merchant seamen deceased, or of seamen who through illness or infirmity have left the sea.

**Royal National Institute for the Blind,** 224 Gt. Portland Street, London, W.1. A voluntary organisation serving 81,000 blind of England and Wales, and the blind in many parts of the British Empire.

**Royal National Life-Boat Institution,** 42 Grosvenor Gardens, S.W.1. Its objects are the rescue of life from shipwreck round the coasts of Great Britain and Ireland by providing and maintaining the life-boat fleet and equipment; by rewarding life-boat crews and other helpers and compensating them for injury on service.

**Royal National Mission to Deep Sea Fishermen,** 43 Nottingham Place, London, W.1. Established to preach the Word of God to fishermen and their families and in every way possible to promote and minister to their spiritual and temporal welfare. Is not State aided.

**Royal Naval Benevolent Society,** 1 Fleet Street, E.C.4. Gives financial assistance to officers of the Royal Navy and Royal Marines and their dependants.

**Royal Normal College for the Blind,** Albrighton Hall, Broad Oak, Shrewsbury, and Rowton Castle, Near Shrewsbury. A selective school for boys and girls between the ages of 12 and 16 years. Training departments in music, piano tuning, typewriting.

**Royal Sailors Rests,** 31 Western Parade, Portsmouth. Provides food, beds, recreation for sailors when ashore in Portsmouth and Devonport. Temperance principle—gospel services. Destroyed in 1941. Continuing in temporary premises. New buildings planned.

**Royal Society for the Prevention of Accidents, The,** Terminal House, 52 Grosvenor Gardens, London, S.W.1. A body of accident prevention workers actively engaged in an unending struggle to overcome the tragic accident problem which is causing 18,000 deaths a year and a vast number of injuries.

**Royal Society for the Prevention of Cruelty to Animals,** 105 Jermyn Street, St. James's Street, London, S.W.1. Works unceasingly for the encouragement of kindness to animals. There would be less cruelty if there were more R.S.P.C.A. Inspectors, less unnecessary suffering if there were more R.S.P.C.A. clinics.

**Royal United Kingdom Beneficent Association,** 13 Bedford Street, W.C.2. Primarily to grant annuities to any gentlefolk in British Isles over 65 and in straitened circumstances; or over 40 but who through ill health are unable to earn their own livelihood.

**Salvation Army,** 113 Queen Victoria Street, London, E.C.4. Preaches Christianity in Action from 20,000 centres in 89 countries and colonies. Has 26,747 officers and 102,607 unpaid officers.

**Searchlight Cripples' Workshops,** Mount Pleasant, Newhaven, Sussex. A home and workshop for young men too badly crippled for acceptance by Ministry of Labour training establishments for the physically handicapped.

**Shaftesbury Homes and "Arethusa" Training Ship.** Headquarters: 164 Shaftesbury Avenue, London, W.C.2. Maintains and trains poor boys and girls and gives them a hundred per cent. chance in life. Many old *Arethusa* boys have attained Commissioned Rank. Girls are prepared for household duties and nursing.

**Shaftesbury Society,** John Kirk House, 32 John Street, London, W.C.1. Founded in 1844 as the Ragged School Union. Renders Christian social services to poor and crippled children and their parents in the neediest areas of London.

**Shipwrecked Fishermen and Mariners' Royal Benevolent Society,** 16 Wilfred Street, London, S.W.1. Their object is to feed, clothe, assist and send home and replace the losses of shipwrecked fishermen.

**Society for the Propagation of the Gospel,** 15 Tufton Street, Westminster, London, S.W.1. Evangelistic, educational and medical missionary work both for our own people and non-Christian people in 48 overseas dioceses.

**Soldiers' Sailors' and Airmen's Families Association,** 23 Queen Anne's Gate, London, S.W.1 A nation-wide voluntary organisation to give advice to the families of service and ex-service men and women.

**Solicitors' Benevolent Association,** Clifford's Inn, Fleet Street, London, E.C.4. A voluntary organisation for the relief of necessitous Solicitors on the Roll for England and Wales, their wives, widows and families.

**S.O.S. Society,** 24 Ashburn Place, London, S.W.7. Homes for old people who can no longer fend for themselves, and hostels for men and boys who are temporarily homeless or whose lives have gone adrift through misfortune.

**South London Mission,** The Central Hall, Bermondsey, S.E.1. Eight centres of Christian service of the community in the inner belt of London. Particular care of old age pensioners with Eventide Homes maintained at Lancing. Open-air work and Christian literature.

**St. Dunstan's,** 1 South Audley Street, London, W.1. Is responsible for the re-education and training, settlement in homes and occupations and the lifelong welfare of blinded service men and women.

**St. Francis' Home,** Shefford, Bedfordshire. A Catholic charity established in 1869 for the care of orphan and destitute Catholic children.

**St. Loyes College for the Training of the Disabled, Exeter.** A voluntary organisation which trains physically disabled persons of both sexes for employment in industry.

**St. Pancras Housing Society,** 140 Eversholt Street, London, N.W.1. Founded to re-house slum-dwellers in St. Pancras, it supplements its building activities by social work, including two Nursery Schools and a Children's Holiday House.

**Star and Garter Home,** Richmond, Surrey. Provides a permanent home and gives skilled medical and nursing attention to paralysed and otherwise totally disabled men of H.M. Forces.

**Toc H,** 47 Francis Street, London, S.W.1. Founded by the Rev. P. B. (Tubby) Clayton, M.C., at a meeting of men who discovered in Talbot House, Poperinghe, from 1915 onwards, the value of friendship and good humour in common service to others. Fellowship, service and fairmindedness are the basic aims of this open-to-all Christian society.

**Trinitarian Bible Society,** 7 Bury Place, Bloomsbury, London, W.C.1. For the wide-spread distribution of the Word of God, especially considering the needs of those unable to buy scriptures.

**United Society for Christian Literature,** 4 Bouverie Street, London, E.C.4. Oldest inter-denominational body of its kind. Its income is used in publication of Christian literature in Great Britain, Asia and Africa.

**UFAW (The Universities Federation for Animal Welfare),** 7A Lamb's Conduit Passage, London, W.C.1. Conducts research to obtain facts about problems of animal welfare and strives to promote humane behaviour towards wild and domestic animals in Britain and abroad.

**Wireless for the Bedridden Society,** 55A Welbeck Street, London, W.1. Aims to provide wireless facilities for those who are bedridden or house-bound and are too poor to obtain them for themselves.

**Wood Green Animal Shelter, The,** 601 Lordship Lane, London, N.22. Has cared for sick, injured, unwanted and stray animals since 1924.

**Woodlarks Workshop,** Farnham, Surrey, takes chair-bound young women too severely handicapped to qualify for Ministry of Labour schemes, and gives them a permanent home and steady work at plywood toymaking. They learn to live fully and enjoyably and so overcome their handicaps.

[*continued from p.* 903]

v. *Westminster City Council and Cane* (*V.O.*) (1958), 51 R. & I.T. 175, the Lands Tribunal ruled that both church rooms and reading room were exempt from rating under s. 7. The church rooms were exempt because the hereditament looked at as a whole was a place of public religious worship, and neither it nor any part of it was deprived of the exemption by other accommodation which was not strictly ancillary to public religious worship but was ancillary to a place of public religious worship. The reading room was exempt as it was a similar building to a church hall within s. 7 (2) (*b*) in that it provided for an activity of a religious character required by the members of the church, and also afforded a place largely used for missionary activity in connection with the church.

In this case the tribunal's attention was drawn to the other case under s. 7, but as the facts there were so different the tribunal did not feel bound to follow its earlier decision. That case was *Springfield Synagogue* v. *Gladwin* (*V.O.*) (1958), 51 R. & I.T. 75, where it was held that rooms used as dwelling accommodation by the widow of a former beadle of the synagogue, as well as for administrative purposes, were not exempt from rating under s. 7 (2) (*b*) because they were not a "similar building" to a "church hall" or "chapel hall," for that expression did not include a dwelling-house or administrative accommodation but pointed to premises provided for use by the whole or a substantial part of the congregation.

### Exemption for certain playing fields

Partial exemption for rates under s. 8 (2) is given to any hereditament consisting of a playing field (i.e., land used mainly or exclusively for the purposes of open-air games or of open-air athletic sports), occupied for the purposes of a club, society or other organisation which is not established or conducted for profit and does not (except on special occasions) make any charge for the admission of spectators to the playing field (s. 8 (1) (*c*)).

In *Royal London Mutual Insurance Society, Ltd.* v. *Hendon Borough Council* (1958), 51 R. & I.T. 285, the Divisional Court held that the company's staff playing fields, occupied for the purposes of its staff clubs, was a playing field within s. 8 (1) (*c*), and so entitled to relief. Although the sports ground with pavilion was owned and rated as being occupied by the insurance company, it was managed by a joint committee of two staff clubs of the company on behalf of the clubs and the company. The clubs were not established or conducted for profit. The sports ground was used solely by the company's employees for open-air games, no other activity taking place there. It was financed by contributions from members' club subscriptions, by an annual grant from the company and by the company's payment of rates, water rates, insurance and Schedule A tax. The sports ground was held to fall within s. 8 (1) (*c*) since it was occupied for the purposes of the clubs within the meaning of the section; the section did not import exclusive occupation for those purposes, and the benefit to the company was too remote.

Entitlement to exemption also arose in *Leeden* v. *Audenshaw Urban District Council* (1958), 51 R. & I.T. 362, where the Chancery Division granted a declaration that the hereditament, occupied by the English Steel Corporation's Sports and Social Club at Droylesden Royal in Audenshaw Urban District, was a hereditament consisting of a playing field within the meaning of s. 8 (1) (*c*). The sports ground had been provided by the company since 1939, and in 1952 a building was erected there to house a bar, committee room, kitchen and lavatory. In 1955 a large hall was built. On the evidence before him the judge held that the playing field was "occupied mainly for the purposes of open-air games" and, accordingly, the occupying club was entitled to the partial relief from rates under s. 8 (2) in respect of the sports ground.

### Miscellaneous points under s. 8

In *St. Pancras Metropolitan Borough Council* v. *University of London* (1957), 50 R. & I.T. 801; 101 Sol. J. 959, the Court of Appeal held that a notice by a rating authority determining the limitation on rates chargeable in respect of a hereditament under s. 8 (2) could not be validly served on the occupier of the hereditament under s. 8 (3) before the first year of the first new valuation lists under the 1955 Act, which began on 1st April, 1956.

The validity of a notice under s. 8 (3) also came in question in *Westminster City Council* v. *London University King's College* (1958), 51 R. & I.T. 507; p. 619, *ante*. Here the Westminster City Council, having on 14th March, 1957, made their general rate for the year beginning on 1st April, 1957, served on the ratepayer on 28th March, 1957, a notice purporting to determine the partial relief from rates to which it was entitled under s. 8 (2) as from 31st March, 1960, in pursuance of the provisions of s. 8 (3). The Chancery Division upheld the validity of the notice since s. 8 (2) (*b*) (providing for the application of the relief during the financial year beginning on 1st April, 1957), had effect in respect of the organisation under s. 8 (3) "for the purposes of the making and levying of rates" in the rating area, because at the date of the service of the notice: (1) the organisation was one to which s. 8 (2) applied; and (2) the "making and levying of the rate" meant the whole statutory process of raising money by means of a rate from start to finish, particularly having regard to the rating authority's need to take the relief into account in its estimate of the product of a penny rate required to be made by 1st February, 1957, and to show the relief in the rate charge under the Rate Accounts (Metropolitan Boroughs) Regulations, 1953; and (3) the organisation was one to which s. 8 (2) applied at the date of the service of the notice.

In *Horace Plunkett Foundation* v. *St. Pancras Metropolitan Borough Council* (1957), 50 R. & I.T. 825; p. 33, *ante*, office premises were occupied by the Horace Plunkett Foundation which was not established or conducted for profit and whose main objects related to research and assistance in the sphere of agriculture. It was agreed that the premises were a hereditament within s. 8 (1) (*a*). Up to 31st March, 1956, the organisation had been exempted from rates in respect of the premises as a scientific society under the Scientific Societies Act, 1843, but after the revaluation the premises were assessed in the new valuation list and rates were demanded. The Divisional Court held that the rates were recoverable, since the limitation on rates imposed by s. 8 (2) (*a*) applied only where rates had been charged in respect of the premises in the last year before the new list came into force.

### Decision under s. 9

Although there have been a considerable number of reported cases under ss. 7 and 8 of the 1955 Act, until very recently no case appears to have been reported on s. 9 of that Act which gives certain miscellaneous reliefs from rates. In particular, s. 9 (1) directs that "for the purpose of ascertaining the gross value of a hereditament for rating purposes, no account shall be taken—(*a*) of any structure belonging to the Minister of Health and supplied by that Minister, or (before 31st August, 1953) by the Minister of Pensions, for

the accommodation of an invalid chair, or of any other vehicle (whether mechanically propelled or not) constructed or adapted for use by invalids or disabled persons; or . . . (*d*) of any structure which is of a kind similar to structures such as are referred to in paragraph (*a*) . . . of this subsection, but does not fall within that paragraph by reason that it is owned or has been supplied otherwise than as mentioned in that paragraph."

As reported in *Rating and Income Tax*, 11th December, 1958, pp. 789, 800, a local valuation court of the North-West London Valuation Panel has recently allowed a ratepayer's appeal against the valuation officer's objection to the exemption from rating of one of a block of six pre-fabricated garages The ratepayer in that case was a disabled person whose saloon car had been adapted for his use by the installation of hand controls. The garage was occupied by the ratepayer who rented it on exclusive terms from a private landlord. If the principle decided in that case is correct it should follow that most disabled car-users, whether owning their vehicles or having them on loan from the Ministry of Health (e.g. certain ex-service disabled persons who receive cars and disabled civilians who are supplied with invalid carriages), who rent a garage for such a vehicle should be able to obtain rating exemption in respect of that garage.

# NON-CONTRIBUTORY PENSIONS AND NATIONAL ASSISTANCE GRANTS

SINCE the National Insurance (Determination of Claims and Questions) Amendment Regulations, 1958 (S.I. 1958 No. 701), permitted legal representation at hearings of local tribunals, solicitors have been consulted upon National Insurance problems rather more than previously. In many cases rulings made by insurance officers are correct in law and not appeal-worthy, but the claimant does not understand the complex rules involved and no clear explanation has been given to him before he consults a solicitor. To receive such an explanation is much more satisfactory to the claimant than pursuing a hopeless appeal. To the extent to which the solicitor can give one he is both helping the claimant and the appeal machinery by reducing the number of time-wasting appeals. In connection with hopeless claims for retirement pension or even sickness and unemployment benefit, however, it must often happen that the solicitor wishes to be able to help but is not sure in which direction his client should be persuaded to go. It is the object of this article to draw the attention of solicitors to the conditions governing the award of non-contributory old age and blind pensions and the making of assistance grants. All of these are administered by the National Assistance Board. Application forms, obtainable from post offices, should be forwarded to the area officer of the Board, whose address is given in telephone directories. The application forms relevant are, for non-contributory old age and blind pensions form N.1, and for National Assistance grants, form O.1.

## Non-contributory pensions

For the very poor a non-contributory pension, varying from 28s. 4d. to 4s. 4d. a week according to circumstances, may be available. Certain detailed conditions must be satisfied before an award can be made. Subject to a means test, payment may be made to a man or woman who has attained the age of 70 (or 40 in the case of a blind person). Such a pension cannot be paid to a person in receipt of a National Insurance retirement pension or widow's benefit. If the National Insurance pension or benefit is being paid at a reduced rate, e.g., because of insufficient contributions, and a non-contributory pension would be paid at a higher rate, the latter may be substituted for the former.

### *Means test*

No person is entitled to a non-contributory pension if his net yearly means exceeds £89 5s. a year. To obtain the net figure certain deductions are made including a deduction of £39 a year from any means other than earnings. Generally the yearly means includes all income received in cash other than income from capital; the yearly value of any owner-occupied property; and the value of such benefits as the presence in the household of persons who are not dependent on the householder and are assumed to make a contribution towards the household's general expenses. Any capital available is expressed in terms of yearly income by ignoring the first £25 but by including one-twentieth of the next £375 and one-tenth of any balance over £400. The term "capital" includes the value of property not owner-occupied and the market value of invested capital.

### *Other conditions*

Only a British subject of at least ten years' standing at the date of application may be granted a non-contributory pension. In addition certain residence conditions must be fulfilled. A British subject by birth must have resided in the United Kingdom or the Isle of Man for a total of twelve years since attaining the age of 50 (or 20 in the case of a blind person). A naturalised British subject must have been so resident for a total of twenty years. Certain periods of residence abroad qualify as residence in the United Kingdom for this purpose.

A married person who satisfies the conditions of age, nationality and residence may claim a pension irrespective of whether or not his or her spouse satisfies the conditions. When a married couple reside together in the same house, the means of each spouse are reckoned as half the combined means of the two, and each one is allowed the benefit of the £39 deducted from means other than earnings. It is necessary for both husband and wife to complete a separate application form if each wishes to claim a pension.

### *Amount of Pension*

The pension payable is reckoned in accordance with the following table :—

| Yearly means (after deducting £39 if appropriate) | | Rate of pension per week | |
|---|---|---|---|
| Exceeding | Not exceeding | Person other than a married woman | Married woman |
| £ s. d. | £ s. d. | s. d. | s. d. |
| — | 26 5 0 | 28 4 | 18 4 |
| 26 5 0 | 31 10 0 | 26 4 | 18 4 |
| 31 10 0 | 36 15 0 | 24 4 | 18 4 |
| 36 15 0 | 42 0 0 | 22 4 | 18 4 |

| Yearly means (after deducting £39 if appropriate) Exceeding | Not exceeding | Rate of Pension per week Person other than a married woman | Married woman |
|---|---|---|---|
| £ s. d. | £ s. d. | s. d. | s. d. |
| 42 0 0 | 47 5 0 | 20 4 | 18 4 |
| 47 5 0 | 52 10 0 | 18 4 | 18 4 |
| 52 10 0 | 57 15 0 | 16 4 | 16 4 |
| 57 15 0 | 63 0 0 | 14 4 | 14 4 |
| 63 0 0 | 68 5 0 | 12 4 | 12 4 |
| 68 5 0 | 73 10 0 | 10 4 | 10 4 |
| 73 10 0 | 78 15 0 | 8 4 | 8 4 |
| 78 15 0 | 84 0 0 | 6 4 | 6 4 |
| 84 0 0 | 89 5 0 | 4 4 | 4 4 |

Adjustment to a pension is made if a pensioner is an in-patient of a hospital or similar institution and is receiving free maintenance under the National Health Service.

### National Assistance grants

Need is the criterion by which applications for National Assistance grants are judged. Any person aged sixteen years or over, not in full-time work and in need, may apply for assistance. Every applicant has a right of appeal to an independent local appeal tribunal before which he may be legally represented (National Assistance (Appeals Tribunals) Amendment Rules Confirmation Instrument, 1958, S.I. 1958 No. 714). Further, retirement pensioners or those in receipt of widows' benefit, unemployment or sickness benefit, may be given grants to supplement the payments received under the National Insurance Acts. Applications must be made to the area officer of the National Assistance Board in person or by post unless the applicant is under pensionable age and available for work when he should apply through his local employment exchange.

The relevant regulations are the National Assistance (Determination of Need) Regulations, 1948 (S.I. 1948 No. 1334), as amended by the 1957 Regulations (S.I. 1957 No. 2072). Readers are also referred to the useful explanatory leaflet A.L.18, issued by the National Assistance Board.

*Assessment of need*

Whether an applicant is considered to be in need of assistance depends on such individual circumstances as whether he is married and has dependent children, whether he is a householder, the amount of rent he pays and what are his resources.

The scale of allowances for needs other than rent permits payment of 76s. a week for a married couple or, where that rate does not apply, 45s. a week for a person who is living alone or is a householder and as such directly responsible for rent and household necessaries. Lower rates are payable in respect of other persons and dependants and these vary according to the age of the person concerned. A higher scale is available for the needs of an adult who is blind or has suffered a loss of income to undergo treatment for respiratory tuberculosis.

In the case of an applicant living alone or a householder, the amount added to the standard allowance for rent is usually the net amount of rent paid including rates. If the rent is substantial the extent to which it may be paid is decided by the National Assistance Board's officer after considering the recommendations of the local advisory committee for the area. Where the applicant is resident in someone else's household the amount added for rent is a reasonable share of the rent paid by the householder, such amount being not under 2s. 6d. nor over 10s. No rent allowance is payable to applicants under the age of eighteen.

*Treatment of applicant's resources*

After the applicant's needs have been considered the extent of his resources is ascertained. His resources are taken to include everything that the applicant, his or her spouse and dependants, would have to support them if no assistance were granted by the Board. Furniture and similar personal belongings are excluded but, with certain exceptions, all property and income, including National Insurance payments, are taken into account.

The total income which may be disregarded is 20s. a week, although this sum may emanate from more than one of various sources. These sources include, as to the first 10s. 6d. a week, sick pay from a friendly society or trade union, a superannuation payment or a charitable grant. The complete limit of 20s. a week may be disregarded if it is derived from a payment of workmen's compensation, disability pension, National Insurance disablement benefit, maternity allowance or civilian injury pension under the Personal Injuries (Emergency Provisions) Act, 1939. Detailed rules govern the disregarding of weekly sums of up to 20s. derived from earnings. The overriding limit of 20s. a week, to what may be disregarded, applies to the total of earned and other income.

Certain items are disregarded completely. These include maternity and death grants, the capital value of the house in which the applicant lives and the first £375 of money invested since 2nd September, 1939, in national savings and certain approved banks and described as "war savings." Other capital belonging to the applicant, his or her spouse and dependants is aggregated, and if the value is less than £75 altogether this is disregarded also. Where the value is £75 or more up to £400 it is taken into account at the rate of sixpence a week for the first £75, plus a further sixpence for each further complete £25. Thus if the applicant possesses £110, not being war savings, one shilling a week is taken into account in respect of it. If the applicant has capital which cannot be disregarded in excess of £400, as a rule no assistance will be granted. However, in special circumstances or cases of urgency assistance may be granted where normally it would not be. Grants may be made to persons in need in respect of National Health Service charges for the supply of glasses, dental treatment, dentures, prescriptions and surgical appliances.

The extent to which the National Assistance regulations must be applied can be judged from the fact that in September, 1958, the following numbers of weekly assistance grants were being paid as supplements to various National Insurance benefits: in respect of unemployment benefit, 48,000; sickness benefit, 105,000; retirement pension (including contributory old age pension), 883,000; and widow's benefit (including 10s. basic pensions), 51,000 (*Hansard*, Commons, 10th November, 1958, cols. 25 and 26).

D. N.

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Mr. JOHN HUGH NEVILLE BOURNE, who has been Assistant Clerk of Surrey County Council since 1952, has been appointed Deputy Clerk of Cheshire County Council. He will take up his new post on 1st April.

Mr. JOHN MORRIS ROGERS, solicitor, of Dolgelley, Merionethshire, clerk to the Dolgelley Magistrates, has been appointed clerk to the Towyn Magistrates in succession to the late Mr. H. M. Arthur, of Machynlleth.

# THE CHARITY COMMISSIONERS

If the Charity Commissioners had existed in the eighteenth century or before they would almost certainly have had their habitation in one of the Inns of Court where most of the legal officers were established. Crown Office Row and King's Bench Walk in the Temple commemorate two. The old office of the Masters in Chancery in Stone Buildings is now the headquarters of the Inns of Court Regiment. The former office of the Duchy of Lancaster stood in Gray's Inn until the devastation of the last war. There also was the Star Chamber Office, the Pipe Office, the Nisi Prius Office and the Hawkers' and Pedlars' Office.

But the Charity Commissioners only came into existence as a result of the Charitable Trusts Act, 1853, and they never had an abode in the legal quarter. After starting in temporary premises at No. 20 Duke Street, Westminster, they moved to No. 8 York Street, St. James's, where they stayed from 1855 to 1875. Then they occupied Gwydwr House in Whitehall from 1876 to 1903. Finally in 1904 they settled in Ryder Street between Jermyn Street and Pall Mall, where they have for their immediate neighbours Christie's and Quaglino's, the *Economist* and the Eccentric Club. The building, which is late Victorian, strikes one as curious until one realises that it was built as an hotel, a fashionable but very discreet hotel, even patronised by royalty, but not in a manner which would have amused Queen Victoria. Bathrooms are still to be found in unexpected places. More intimately reminiscent of the building's antecedents there remains in the panelling of the entrance hall a picture of a festive figure in seventeenth century costume. Until fairly recently one of the former reception rooms contained other paintings, frankly erotic, but the Office of Works, deeming them likely to cause embarrassment to the female staff who were to work there, has now removed them.

Thus charity now decently covers a multitude of past sins, to adopt and adapt a *dictum* of Mr. Justice O'Brien in the Irish Courts long ago, as recalled by Serjeant Sullivan. The judge was trying an action of ejectment to recover possession of premises in a street of disorderly houses in Dublin notoriously maintained by the tenants in violation of the law. The proprietress claimed a set-off for moneys spent on improvements and decorations. "Mr. Cherry," said the judge to counsel, "this poor woman appears to have spent a lot of money on your old house. She has no legal claim, perhaps, but your clients should consider whether they ought not to make her some allowance." Cherry answered: "I will convey your lordship's opinion to my clients but I fear they are only trustees; in fact, I believe they are trustees of a charity." "Oho, Mr. Cherry," cried O'Brien, "that indeed must be a charity that covers a multitude of sins."

The strangest thing about the history of the Charity Commission is that it was not established at least fifty years sooner than it was. But then, the solid tradition of legislation in England is not to be precipitate. From the time of Elizabeth I charities had been under the general supervision of the Court of Chancery. On an information being laid before it, the court might issue a commission to the bishop of the diocese concerned to summon a jury to inquire into the abuses and malversations of the trustees in question; from his decision an appeal lay to the Court of Chancery. Whatever virtue this procedure may have originally possessed, in 200 years the whole machinery had so rusted up as to be utterly ineffective. In 1786 Parliament began to stir anxiously and uneasily, and an Act was passed requiring the minister, churchwardens and overseers of every parish to make returns of all the charities within it. The next step was taken through the reforming zeal of Sir Samuel Romilly who promoted an Act to provide a summary remedy for correcting abuses in the administration of charities, but unfortunately the word "summary" had to be interpreted in the context of the old unregenerate practice of the Court of Chancery and so, though this new procedure was an enormous improvement on the old, it was still ruinously expensive. In the course of the debates on the Act of 1853, Lord Chancellor Cranworth remarked that Chancery proceedings on a charitable fund yielding £30 a year would necessarily absorb all the capital. Sir William Page Wood in the Commons said he had seen an inscription in St. Mary le Strand recording that a lady had left £600 to that church for charitable purposes but that by a Chancery suit it had been reduced to £5.

After Romilly's Act a quarter of a century went by during which a succession of commissions enquired into the charities of England and Wales, making thirty-two reports contained in thirty-seven folio volumes. One immediate result of their labours was that the Attorney-General was able to recover £600,000 for charitable purposes temporarily lost through abuses now revealed to him.

The commissions having prepared the ground, the time now came for sowing by the legislature, but for a long while this was frustrated by party politics. In 1844, 1845 and 1846 Lord Lyndhurst, then Conservative Lord Chancellor, brought in three Bills to place charities under the supervision of a Board, but all three came to nothing. Lord Cottenham and Lord Campbell in particular opposed giving what they considered arbitrary and despotic powers to a secret and irresponsible tribunal. In 1846 the Conservatives went out and the Liberals came in, Lord Cottenham becoming Lord Chancellor. In 1847, 1848, 1849 and 1850 four more Bills were introduced based on a scheme which dispensed with the Board previously proposed. All came to nothing, and in 1849 a further commission of inquiry was appointed. It prepared a Bill which eventually took shape as the Act of 1853.

All those long years of investigation had revealed a very peculiar state of affairs. There were 13,000 charities with an annual income of less than £5; 5,000 with an annual income of less than £10 and almost as many with an annual income of less than £100. As an effective means of enforcing the trusts relating to them the expensive litigation of the time was out of the question. And all too often they needed enforcing. St. Cross at Winchester, one of the noblest medieval charities in England, had come under investigation by the commissioners who discovered that the Master, the son of a former Bishop of Winchester, had applied to his own purposes all the fines received on renewal of leases; that the whole institution had fallen into decay, that the recipients of the charity had gone and that the whole had been made subservient to individual purposes. Ashton's Charity for poor persons in the City of London exemplified another typical abuse. In 1727 £100 a year, less £5 for expenses, had been bequeathed, but the trust had never been complied with so that, even without reckoning interest, the beneficiaries had lost almost £12,000. Then there was the case of the charities for the poor prisoners of the City of London. Until the

middle of the nineteenth century some £700 a year was being distributed to them. On the mere rumour of an impending inquiry this sum rose to £1,100 in one year and over £1,400 the next. Again, under seven charities for the poor the Merchant Taylors Company was distributing £40 a year which, on investigation, was increased to £300. Lack of business attention or plain dishonesty was robbing charities right and left. In one case the commissioners found a renewal rent of £2 being taken for a property which was subsequently let at £1,500.

In the end both the political parties had a hand in passing the Charitable Trusts Act. In 1851 Lord Truro, as Lord Chancellor, introduced it into the Lords under a Liberal administration. Under the short-lived Conservative Government of 1852, the Attorney-General, Sir Frederick Thesiger, piloted it through the Commons. In May, 1853, Lord Cranworth, the new Liberal Lord Chancellor, saw it through its final stages in the Upper House.

It finished up with the comedy of an altercation between two septuagenarian Law Lords, Lord St. Leonards, ponderous and pedantic, and Lord Brougham, volatile and versatile, still, even in old age, the *enfant terrible* of politics and the law. "Lord St. Leonards said that it appeared to him in a vast number of cases of small charities the trustees had been guilty, not so much of breach of trust as of errors of judgment. This opinion was founded on his experience as a member of the Charity Commission; he was a member, although, by some accident, his name did not appear in the report.

Lord Brougham: Because you never attended.

Lord St. Leonards: I beg my noble and learned friend's pardon, I attended more frequently than he did.

Lord Brougham: Oh dear, no!

Lord St. Leonards: I attended regularly almost every day but I never saw my noble and learned friend there, except on the first day.

Lord Brougham said his noble and learned friend appeared to be gifted with a faculty for which he had never before given him credit, the imaginative. His learned friend had drawn exclusively upon his imagination when he said that he had attended the commission every day but never saw him there and he (Lord Brougham) must acknowledge that he also was in error in supposing his noble and learned friend had never attended for, on consulting with a member of the commission now below the Bar, he was reminded that an arrangement had been made by which he and his noble and learned friend attended on alternate days. Under these circumstances . . . it was not only natural but inevitable that he and his noble and learned friend should never see each other on the commission because . . . it was impossible that they should both be present at the same time."

So the little comedy of errors was resolved; the Act became law and a new era opened in the administration of English charities.

RICHARD ROE.

# THE CY-PRÈS DOCTRINE AND THE PROBLEM OF ITS REFORM

**By Lord Nathan**

*Address given by Lord Nathan to the Harvard Law School on 18th November, 1958. Lord Nathan was Chairman of the Committee on the Law and Practice relating to Charitable Trusts whose report was published as Cmd. 8710 in December, 1952.*

The Harvard Law School enjoys a reputation which is world-wide and it has been one of the pleasures of having practised as a solicitor for nearly half a century to have watched it go on from strength to strength.

You have asked me to speak about the doctrine of *cy-près*, perhaps the most important element in charitable trust law. I am very glad to do so. It is a subject to which I have given a good deal of thought for a good number of years, not only as a solicitor charged with the drafting of trust deeds, and advising generally on the law relating to charity, but also as a trustee of many charities, both great and small—as chairman of a number of them. Then, in 1950, I was appointed by the Prime Minister (then Mr., now Lord, Attlee) chairman of an enquiry into the law and practice relating to charitable trusts—the so-called "perpetual" trusts. This was an enquiry for which there had long been wide public demand, and which was the first for a century to make a comprehensive review of the whole subject. The public demand arose very largely from a desire to see some reform of the doctrine of *cy-près*, though, as I say, we were concerned not only with this question but with the whole range of the law as it had come down to us at that time.

When I speak of the law and practice relating to *cy-près*, I mean the law and practice in England and Wales. Scotland, as in so many other matters, has its own way of setting about charitable trust law. And it is of *cy-près* in England and Wales that I shall speak to-day. I am not going to speak about the problem of *cy-près* as it arises in the United States—if only because charitable trust law varies from State to State and in any case, for this purpose, it is I who would be sitting at your feet. I know, however, that many States in America inherited from us their charitable trust law and that many of the problems of *cy-près* and its reform which face us face them also. What I have to say about the law and practice in England and Wales, therefore, will, I hope, shed light also on some at any rate of the problems facing some of you.

I begin by looking at the difference between charitable trusts, public trusts, and other or private trusts.

*The origins of the cy-près doctrine*

From the very earliest days, a charitable trust has had certain very distinct characteristics, characteristics derived from the privileges in law accorded to it. By "the very earliest days" I mean something like a thousand years ago. In those days, the law relating to trusts was dealt with by the ecclesiastical courts, courts presided over by ecclesiastics (and the predecessors of our present Court of Chancery). From the outset, these courts singled out gifts to charity for special privileges; from the outset, that is to say, these courts conferred privileges on charitable trusts, and only on charitable trusts, which set them apart, which put them in a class by themselves.

To these ancient privileges there has been added in recent years the privilege of exemption from taxation, but that is another story, with which we are not concerned to-day.

What are these ancient privileges? They are three, and they are closely connected with one another. The first is the privilege of exemption from the rule against perpetuities. Charity was regarded as having a fictitious personality. It was regarded as an artificial legatee or *cestui que trust* and it was accorded the privilege of holding property in perpetuity. It was exempted, that is to say, from the rule against rendering property inalienable for a longer period than lives in being and twenty-one years. The courts were ready to see property tied up for ever and a day so long as the purposes for which it was given were charitable.

I will come on in a minute to the meaning of "charitable" and to the definition of "charity."

The second privilege is the privilege of being valid or "good" even if the disposition to charity—usually testamentary—is in imprecise terms. The precise terms considered essential to make good other dispositions were not required to make valid a gift to charity. Lord Eldon, one of our great Lord Chancellors, summing up in a case about 150 years ago, put it—somewhat pontifically—like this :—

> "... I took it to be firmly established, upon the authority of precedents too numerous to be mentioned, that ... where the testator has sufficiently indicated that charity is his legatee, the court will consider charity as the whole substance of the legacy; and in such cases only, will provide a mode by which that legatee shall take, but by which no other than charitable legatees can take."

Now the third privilege accorded by the ecclesiastical courts to charitable trusts is consequent upon these two that I have just outlined briefly. The third privilege is *cy-près*, the Norman French for "as near as possible." The privilege of perpetuity and the privilege of being valid even if the disposition is in vague terms are immense in themselves but without this third privilege, of *cy-près*, they would be stillborn. The courts saw this clearly, and they met the difficulty by developing the doctrine of *cy-près*.

If a perpetual trust became incapable of execution or if one newly established but in vague terms was at the outset incapable of execution, the courts were prepared to provide new purposes as near as possible to the original ones. By these means, any gift to charity could continue indefinitely and could continue to be active, in the sense that it could be applied to a charitable object.

I do not think I need say more about these privileges except that they apply specifically to charitable trusts and to charitable trusts alone. Although the courts are ordinarily ready to grant an additional or substituted object under the *cy-près* doctrine, they require first to be satisfied that the trust in question is truly a charitable trust.

There has recently been a rather striking case: the case of the Gillingham Bus Disaster Fund. In that case a fund was subscribed for the purpose of defraying the funeral expenses of the Royal Marine cadets who were killed in the accident, caring for those disabled, and then to such worthy cause or causes in memory of the boys who lost their lives as the Mayors of Gillingham, Rochester and Chatham should decide. As the court said, the result showed that emotion is a bad foundation for such an activity. Each of the dead or injured cadets had at common law legal rights against the bus company, which were in due course asserted, with the result that compensation was paid in full. It was held that the surplus of the fund was not held on charitable trusts, and must therefore be returned to the donors.

Take, too, the case relating to the estate of the famous author Sir Arthur Conan Doyle, the creator of Sherlock Holmes. A fund was subscribed in response to an appeal to establish an institution to be a focal point for spiritualism all over the world, in memory of Sir Arthur Conan Doyle. The fund subscribed was inadequate. It was held that the memorial was not charitable, and the trustees should distribute the fund to the subscribers.

I have said enough to bring home to you the extent to which they put charitable trusts in a class by themselves; and, in particular, how closely the doctrine of *cy-près* is bound up with them.

But you may well ask: "What is this all in aid of? What object had these early courts in view in developing this doctrine?" The answer I would give you is in two parts, or, rather, on two levels. On the first, or lower, level I think we can say quite simply that the doctrine suited the interests of the courts—that it was "in aid of" the courts, or, rather, of the Church. It suited the Church to give as much encouragement as possible to charitable giving. It suited the Church because, directly or indirectly, in nine cases out of ten, it was itself the beneficiary!

I said just now that I would say a word about the meaning of charity, the definition of charity. At the time of which we are speaking, there was no statutory definition—any more than there is today. But the limits or scope of charity were (and are) tolerably well indicated by case law and were later summed up by Lord Macnaghten as follows :—

> "Charity" in its legal sense comprises four divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any one of the preceding heads.

I should add that, if charity begins at home, it is not a family affair. A trust, to be good, must benefit the community or a substantial section of it. It is a *public* trust.

Now I do not need to remind you that in those early days the Church undertook not only the cure of souls but was in very large measure the only source of what we now call welfare and educational services. Gifts to charity, therefore, were bound to benefit the Church, if not directly, then indirectly. But the Church could hardly have introduced, let alone maintained, its policy regarding gifts to charity without sanction. What is the sanction behind this policy? Here I come to the second, and higher, level on which an understanding of this policy must be sought.

*The significance of charity*

In any society, in any part of the world, charitable activities are to be observed. Where there are men, there is charity also. And this has always been so.

Confucius says somewhere :—

> "Charity is that rational and constant affection which makes us sacrifice ourselves to the human race, as if we were united with it, so as to form one individual, partaking equally in its adversity and prosperity."

No-one would dispute that. It is obviously true. But it equally obviously does not go far enough. It is not much more than observation—an observation, as it were, of a sociologist. It invests charity with hardly more significance than the giving of hospitality and is concerned only with relations between one man and another.

It is to the theologian that we must look, in the first place, for the real significance of charity; to the theologian and the man of God. Thousands of years before Confucius, many thousands of years before the present era, charity had acquired a unique status. Charity, the giving of alms, was held to be the activity, here on earth, which, more than any other, would tell in favour of the soul in its progress after death. I do not want to examine why this is so—why this process we call charitable giving, the voluntary transference of material wealth, or the bringing of comfort through personal service, to those in need of distress, should have acquired this special significance. I note only that it had done so by the dawn of history. Job, in his affliction, protests that he "delivered the poor that cried, and the fatherless, and him that had none to help him." (Ch. 29, v. 12). The idea of the tithe goes back certainly to Moses. And it is not only in Jewish thought that one finds this concept. The Egyptians took the same view, and so also the followers of Mahomet, today as yesterday. You will recall the much-quoted passage from the Koran :—

> "Prayer carries us half way to God, fasting brings us to the door of his palaces and alms-giving procures us admission."

Christian thought, again, shares with these others this same view of charity, but lays emphasis on the motive behind the act of giving, rather than the act itself.

I said just now that it was to the theologian that we must look in the first place. We must look secondly to the moralist. The concept of alms-giving as cleansing the soul of sin is concerned much less with the effectiveness of the gift. For long, the poor and the distressed were regarded as an aid to salvation rather than a challenge to action. With the gradual development of social consciousness, came a realisation, first that poverty ought to be abolished and later, with increasing economic wealth, that it could be, and would be, abolished. It was to the founder of charities, to the philanthropist, that society looked to achieve this objective. (And, I may add, it still looks to them, and will always look to them, however great the burden carried by State welfare services of one kind and other.) Thus your own Thomas Jefferson wrote :

> "I deam it the duty of everyman to devote a certain proportion of his income for charitable purposes." (Writings, vol. XI.)

In the last few centuries, then, there has grown up beside the older concept of charity as a ransom for the soul, another of charity as a moral obligation towards one's less fortunate fellows. Or, rather, this moral obligation, always implicit in the earlier, religious, one, has become explicit. This twin concept of charity is deeply embedded in our civilisation as we know it to-day. It

would be wrong to suggest that it is confined to the West. It is not. But in many ways it typifies what we stand for: the individual at once responsible and valuable; responsible to an authority beyond the State, to the dictates of his own conscience, or, if you will, to the bar of heaven; and valuable just because of this.

It is in this concept of charity, with its centuries-long lineage, that we find the sanction for the policy of the ecclesiastical courts and later of the Court of Chancery, in according special privileges, of an altogether outstanding kind, to charitable trusts.

*Charity a dual concept*

Any reform of the law of charity, and any reform of *cy-près* must always go forward with the greatest circumspection because of this deep significance of charity to society; and progress is likely to be slow because of the difficulty of carrying over into the law changes in public opinion regarding the weight to be given to what I may call the public and the priviate element inherent in the concept of charity.

Charity is at once a private and a public affair. A charitable trust embodies the personal wishes of an individual to make a gift to charity and husband the money he has set aside from his private resources to enable those wishes to be carried out. In making a gift to charity, which must, as I have said, benefit the community or a substantial section of it, a public trust is created.

These two aspects of a charitable trust represent the twin concepts within that of charity which I have been examining. The private element in a trust represents the concept of charity as a cleanser of the soul; the public element, the concept of charity as an obligation to better the lot of the less fortunate among one's fellows. Some people will give more weight to the first element, others to the second. This duality runs through the whole of the law relating to charitable trusts. Charitable trust law-makers must bear these two concepts continually in mind and no reform will succeed unless it correctly judges the weight likely to be accorded by public opinion to each concept.

As I have suggested, public opinion has tended in recent times to give more weight to the public element and, indeed, my committee of enquiry were charged, under their terms of reference, with considering the changes in the law and practice relating to charitable trusts "which would enable the maximum benefit to the community to be derived from them." Even so, we would have been foolish to discount too heavily, and we did not, I hope, discount too heavily, the claims of founders.

*The call for the reform of cy-près*

I come now to outline briefly the development of the demand for the reform of *cy-près*; then to looking at some of the breaches that have been made in the doctrine and, lastly, to putting before you the reforms my committee proposed.

But in all this, I would plead with you to bear continually in mind the significance and what I have called the duality of the concept of charity and its relevance to *cy-près*. I have spent some time on them advisedly; they are forgotten by the would-be reformer at his peril.

Let me first say a little more about what is meant or implied by the doctrine of *cy-près*. It means now exactly what it meant when it was first developed by the courts. Under it, the purpose of a trust may be changed only when a new trust proves or an established trust becomes impracticable; or if resources become surplus to need. These are the only circumstances in which it is permissible to make any change, and I am dealing mainly here with the charitable trust which becomes impracticable. Let me give an example:—

If a trust were set up to help stamp out a particular disease, let us say leprosy in England, it would have to continue to be so applied so long as there were lepers and however few of them remained. (That is, of course, so long as funds did not become surplus to requirements.) This is the case of *A.-G.* v. *Hicks*.

Or perhaps an even better illustration is a charity devoted to the repair of a road. In the case of *A.-G.* v. *Day* the testator in 1709 gave property to trustees on trust to set aside £40 a year for the repair of a certain road for the benefit of the local villagers, and gave the overplus to Cambridge University. In 1888 the road became controlled by the county council, who were bound to repair it out of the county rates. It was held that the trusts for the repair of the road were still subsisting, and the university could not claim the £40 per year.

Secondly, when these conditions in which it is permissible to make a change are fulfilled, the new purpose of the trust must be as near as possible to the old. This in itself is sometimes rather a problem. There was the well-known case of the diversion to educational uses of an endowment for redeeming mariners captured by Barbary pirates. The court gave up the attempt to find anything akin to this and applied the endowment to education. But then that was in the comparatively peaceful days of 1833. Now the court might well plump for redeeming mariners, or anyone else, kidnapped by unfriendly powers!

I think, however, this case, which has attained a long and respectable notoriety, is often quoted under a misapprehension. The reason why the court in that case (*A.-G.* v. *Ironmongers Company*) applied the endowment to educational purposes was not because this was the purpose nearest to the redemption of mariners captured by Barbary pirates. The testator gave his estate on trust to apply half the income to the redemption of slaves, and the rest for educational purposes, and when the first object failed, the court chose to devote the whole of the income to the other object.

A clearer case is *A.-G.* v. *Gibson*, where a bequest for the redemption of slaves was applied for the education of apprentices in the colonies, and the court was of the opinion that the proposed scheme was as near to the intent of the testatrix as circumstances would admit.

These two limitations of *cy-près*, relating to the conditions in which changes may be made and to the small range within which any change of purpose may be made, have of course to be considered in the light of the economic, as well as the religious, conditions prevailing at the time they were first evolved. When the law first developed, society—social stratification—was very stable and economic advance, as measured, for instance, by the growth of towns, extremely slow. The law did not have to allow for a rate of social and economic change like that we have been witnessing in technically advanced countries in the last century or so. Now, economic and social conditions are far different. Old needs, such as red flannel petticoats (a favourite object of charity for old ladies) have disappeared. New needs, such as the safeguarding of the cultural heritage of the country, have appeared. Old classes of beneficiaries have disappeared. One of them is domestic servants, for whose benefit many trusts were created. And new classes of beneficiaries, such as maladjusted children, emerge.

The process of social and economic change has been gradual. But there was already, over a hundred years ago, a substantial body of public opinion in favour of relaxing the doctrine sufficiently to allow of the revision of the purposes of trusts which had become, not impossible of execution, but obsolete. The case for reform was put, perhaps, most cogently by Lord Hobhouse. Writing some eighty years ago, he said:—

> "No human being, however wise and good, is able to foresee the special needs of society even for one or two generations. And yet our law says that anybody . . . may compel us to take for all time, property saddled with almost any amount or kind of conditions not positively immoral . . . the public should not be compelled to take whatever is offered to it. A certain deference should be paid to the donor's wishes . . . but they should never be allowed to interfere with the public welfare."
>
> (*The Dead Hand.*)

This argument, of course, would be anathema to the ghost of the Ordinary of the old ecclesiastical courts, who had always in front of him the doctrine that the donor's prime object was to benefit his own soul and that his trust should therefore continue unchanged so long as it remained possible to carry it out. And, in the circumstances of his day, as I have emphasised, the likelihood of change was remote. This argument is anathema also to those who hold that, quite apart from any religious implications, the donor has a right to have his wishes respected and that any powers taken to interfere with his wishes are illiberal in the broadest sense and will "dry up the fount of charity."

These arguments were, in part, arguments of principle: that the whole conception of binding future generations was wrong. They were also, in part, practical—that is to say, they arose from a desire to put obsolete endowments to better use. They were not without effect. But it is interesting to note that the first and by far the greatest breach in the doctrine was made in response to a demand to meet a practical need; the demand for public education. Under the Endowed Schools Act of 1869, educational

trusts may be altered, added to, divided and generally re-orientated, within the one field of education, and all without even the necessity for an application from trustees. This power, which is vested in our Ministry of Education, is subject to control by the Privy Council. But it is far-reaching and it has been used to effect. There is no question of the purposes having failed or become impracticable. The main object was to reorganise the trusts of educational endowments "in such manner as may render [them] most conducive to the advancement of the education of boys and girls or either of them."

There have been other breaches of the doctrine since 1869, but on nothing like this scale. The City of London Parochial Charities Act, 1883, brought together hundreds of small charities and extended their beneficial area to accord with the growth of London. The Charitable Trusts Act, 1914, made some useful provisions for dealing with small trusts in towns and there were one or two others. But the great body of trusts remained untouched by these reforms.

Later criticism of the doctrine has tended more and more to emphasise other social arguments for reforms. The tactics adopted have varied. Lord Beveridge, with his treatise *Voluntary Action: A Report on Methods of Social Advance*, published in 1948, probably did more than anything to prepare the way for the setting up of my committee of enquiry. He argued:—

> "In a totalitarian society, all action outside the citizen's home, and it may be much that goes on there, is directed and controlled by the State. By contrast, vigour and abundance of voluntary action outside one's home, individually and in association with other citizens, for bettering one's life and that of one's fellows, are the distinguishing marks of a free society."

This is, indeed, of enormous importance, and I could devote a whole lecture to it alone. Lord Beveridge looked to a radical reform of *cy-près* to provide new funds for voluntary service and sought to bring this about by ridiculing it. Thus he tended to concentrate on freak charities, of which, of course, there are a number. He quoted, for example, a charity to provide peals of church bells—a perfectly valid charitable purpose. But this particular founder laid down that the bells should be muffled on the anniversary of his marriage and that a joyous peal should be rung on the anniversary of the death of his late—and clearly—unlamented wife.

But freak charities form only a tiny fraction of the 80,000 or more trusts still subject to the doctrine. Among these, my committee were mainly concerned with the general run of charities "for the relief of poverty," charities more often than not limited to some special class of beneficiary, and tied to a small beneficial area, such as a parish. The parish may have lost most of its inhabitants to housing estates on the fringe of the town; there may be few potential beneficiaries of the class indicated by the founder, and fewer still ready to put in for whatever help the charity has to offer.

I was told the other day of a trust, I think for old widowers, in a small parish in an ancient cathedral city. Only one old fellow was willing to apply for and accept what the charity had to give, but he earned the gratitude of the trustees for turning up every year for his "dole." When eventually, he died, it was found that he had put aside £400 for the endowment of yet another charity in the parish!

This in many ways epitomises the problems that my committee felt that we had to solve—ineffectiveness and lack of orientation to the modern world. Nothing dramatic, nothing freakish. But a wretched waste of charitable intent and of sorely needed resources. Should the doctrine be relaxed for these trusts for the poor—and also for other remaining types of trusts—that is, for the advancement of religion and "for other purposes beneficial to the community"—as had been done for educational trusts? That was the question before us. Our answer was, Yes.

To those who fear that relaxation for all trusts might "dry up the fount of charity," we can say that this has not at any rate been the effect of the Endowed Schools Act. It has not had an inhibiting effect: far from it. There has been something like a tripling in the number of educational trusts since this legislation was brought in. We therefore felt confident that nothing disastrous would follow a judicious measure of reform, particularly if special safeguards were added for religious charities.

*The present proposals for relaxing cy-près*

How did we tackle the problem of relaxing the doctrine for these other types of trust?

To relax it for more than one type of trust presented problems that did not arise in dealing only with educational trusts. Any revision of the *cy-près* doctrine had to do two things: it had to lay down the conditions in which a change is permissible; and it had to lay down the limits within which changes may be made, or, if not, then the principles upon which they may be made. And this had to be done, as I have said, without losing sight of the original concept behind the doctrine as it has come down to us.

My Committee proposed that it should no longer be necessary to wait until a trust fails, but that it should be permitted to change its purposes in conditions falling far short of failure. These conditions include the trust having become obsolete, or useless, or being otherwise sufficiently provided for. This last is particularly important now that State services of one kind and another have developed so very much, more particularly on our side of the Atlantic.

Then, as regards the second objective, we rejected the idea of indicating limits within which changes could be made, in terms of alternative objects, on the ground that anything of this sort is bound to become obsolete. I am sure that was right. But then we had to find some general principles to govern any changes to be made. That was not so easy, until we discovered that Scotland, as is sometimes the case, was one jump ahead of us and had already devised and successfully administered a relaxing of the doctrine on broad lines. We recommended following their example.

Under the principles which we adopted from Scotland changes must have *regard* to the public interest and existing conditions; and *special regard*—

(*a*) to the spirit of the intention of the founders;
(*b*) to the interest of the locality to which the endowment belongs; and
(*c*) to the possibility of effecting economy in administration by grouping, amalgamating or combining two or more endowments.

It is "the spirit of the intention of the founders" that is the keystone of the principles. It provides some room for manœuvre in reshaping trusts without losing sight of what was first laid down by the founder as the purpose of the trust.

*Initiating the revision of trust purposes*

But it is not enough to lay down principles to govern a relaxed *cy-près* doctrine. It is necessary also to ensure that proper advantage will be taken of these new provisions. Very closely related to the problem of relaxation is the problem of who is to be allowed to take the initiative in seeking a revision of the purposes of a trust.

At present, application for the revision of the purposes of a trust with an income of £50 a year or more may be made only by the trustees. Application in regard to a trust of lesser annual value may be made also by any two or more inhabitants of the place in which it is administered or applicable. My committee, after a lot of thought, came to the conclusion that the initiative should remain with trustees "as the normal procedure." But we recommended that local authorities should be given the right to make proposals about local trusts in their area and that the Government, through the appropriate Ministers, should also be empowered to take the initiative in relation to any trust, if trustees were unreasonably slow in coming forward. But this was envisaged essentially as a default power. We looked to trustees to come forward with proposals for reform of their trusts.

Well, what did Her Majesty's Government think of these recommendations? I am glad to say that they have to a large extent accepted those relating to the relaxing of the *cy-près* doctrine but they did not go all the way with us with regard to initiative. They did not like the idea of local authorities having power to propose the reform of any local trust but they agreed that the Government should be armed with "default powers"—to be used, however, very sparingly. We pressed the public's interests rather more than they; the Government had more regard for the "private" element, as constituted by the founder's representatives, the trustees. When we get to the state of debating legislation, we shall see which is nearer the mark.

*Conclusion*

We must view these efforts towards reform in perspective. Charitable trust law has both a long history and a noble purpose.

And at its kernel is the dual concept of charity as both a public and a private duty. If at times we are tempted to feel despondent we should take heart. If charity is one of the greatest manifestations of the human spirit, the framing of laws to govern charity and the reform of *cy-près*, its central concept, must share some of its glory. We may, I think, say of our endeavours what Bacon, a great lawyer, said of charity :—

"Charity alone admits no excess. For so we see, by aspiring to be like God in power the angels transgressed and fell; by aspiring to be like God in knowledge man transgressed and fell; but by aspiring to be like God in goodness and love, neither man nor angel ever did or shall transgress. For unto that imitation we are called."

(Essays, *Of Goodness*)

# CORRESPONDENCE

*[The views expresed by our correspondents are not necessarily those of "The Solicitors' Journal"]*

## Tariff Insurance Companies and Arbitration Clause

Sir,—With a claim against certain non-tariff insurers one is at liberty, at any time, to issue a writ in the High Court. Not so in the case of tariff companies—the policy invariably contains an arbitration clause, in standard form, as agreed between them all. There is strong objection to this and many consider it calls for Government intervention on the lines of enquiries under the Restrictive Trade Practices Act, 1956.

It may be asked what is the objection when dealing with an old established and highly respected concern as, no doubt, the great majority of the tariff companies are. There are many such as (1) delay, (2) expense, (3) the ability to abuse an arbitration clause and (4) enforcement.

1. *Delay :* First, an award is a condition precedent to enforcing payment. The preliminaries between making a claim and the start of the hearing are capable of being dragged out by the respondent almost indefinitely. Further, a legal arbitrator—often a Q.C. or busy junior—sits only when it suits him, out of normal court hours as a rule, so that he may miss no fees from his practice. He considers, too, the convenience of his colleagues—the other counsel engaged in the case, possibly similarly placed. So one usually has several "bites at the cherry," i.e., an hour or two after court hours once, or possibly twice, a week and perhaps even a Saturday. Thus the hearing of the arbitration may drag on for a long time to the inconvenience of the parties and their witnesses. On the other hand, a High Court action, from the issue of the writ to the close of the pleadings and setting down, is likely to come on for hearing and be heard and finished reasonably quickly.

2. *Expense :* The costs of the actual hearing in the High Court, for both the judge's or, maybe, the official referee's, time and the use and amenities of the law courts amount to but a few pounds a day. The costs of the hearing of an arbitration involve such fee (always very much higher than the court's fee even when reasonable, but sometimes considered excessive) as the learned arbitrator's clerk decides, and there is nothing the parties can do about it : no payment of the fee : no issue of the award. One of the parties, usually the one who hopes or thinks he has been successful, has to advance the arbitrator's fee.

3. *Abuse of the existence of the clause :* The ability of the insurance company to drag out the preliminaries, their knowledge that both the arbitration hearing itself may take much longer than a court hearing and that the great expense may embarrass the claimant, whilst hardly affecting a rich tariff company or its shareholders' dividends, all "load the dice" against the claimant. His advisers are constrained, for all these reasons, to encourage him to accept an offer of an amount in settlement less than the merits seem to deserve.

The existence of such a clause is an objectionable exception to the sound rule that justice should not merely be done but also be seen to be done. To suggest that a reputable tariff company will act as "gentlemen" is beside the point. Insurance is a commercial contract for which one has paid a premium, fixed, incidentally, unilaterally by the company. A claimant should not be put in the position of feeling that he is going "cap in hand" and asking for or being offered a gracious favour because dealing with a "gentlemanly" insurance company.

4. *Enforcement :* When eventually the award is available, it is—if favourable—enforceable only after a writ is issued in the courts and judgment obtained thereon. If unfavourable to the claimant, his legal expenses may be so high as perhaps to teach him a lesson in future to avoid entering into a tariff company policy ever again. All this time the company is immune from any publicity because an arbitration is "Private."

"APOS."

London.

## Sales by Survivor of Tenants in Common and Joint Tenants

Sir,—Having once more had to argue the question of the power of a sole survivor of tenants in common or joint tenants to convey land on sale, I am prompted to submit for consideration by the profession a point which has for some time been present in my mind.

The objection to such a conveyance rests, of course, on the relative provisions of the Trustee Act, 1925, the Law of Property Act, 1925, and the Law of Property (Amendment) Act, 1926, which provide that one trustee cannot give a valid receipt for (*inter alia*) proceeds of sale or other capital money arising under a trust for sale. This point has been discussed many times in legal text books and journals and it now seems to be settled that in the case of a tenancy in common the addition of a second trustee is essential. Argument still continues, however, in the case of a joint tenancy. I have never seen the point raised that this statutory provision only prevents the giving of a valid receipt and not the passing of a good title to the legal estate.

I agree that a purchaser direct from a surviving tenant in common should insist upon the appointment of an additional trustee so that he (the purchaser) can get a good receipt and discharge for his purchase price. But what of the case where he is buying from an individual beneficial owner and finds on perusing the abstract that a predecessor of his vendor has taken a conveyance from a sole surviving tenant in common ? There is, so far as I am aware, no provision that the legal estate did not in fact pass to such predecessor but only that the predecessor did not get a good receipt. Cannot it be argued, then, that the legal estate did in fact pass to the predecessor and that it is therefore in the vendor ? At the most, there may be a lack of a receipt for the predecessor's price but can this prejudicially affect his successors in title ?

If this view is correct it may well go a substantial way to clearing up this point and simplifying conveyancing.

It seems to me, again if I am correct, that it would apply also to sales by a survivor of joint tenants and so settle the still continuing argument as to whether a new trustee is or is not necessary in such cases.

S. CLAYTON BREAKELL.

Manchester, 2.

## ANGLO-FRENCH AGREEMENT ON TAXATION OF ROYALTIES PAYMENTS

On 28th November there came into force an Agreement made between the United Kingdom and France under which, on certain conditions, exemption is granted from payment of the French turnover tax on royalties to United Kingdom inventors (whether individuals or firms) who have licensed the use of their inventions in France. The term "invention" includes the following, whether registered or not : patents, trade-marks, manufacturing processes, techniques and formulas, and copyright. Proof of inventor status must be furnished directly to the French tax authorities on a form of statutory declaration obtainable from Mr. D. Mellor, Room 4158, Board of Trade, Horse Guards Avenue, London, S.W.1 (Telephone : TRA 8855, Ext. 2421), who will also supply on request copies of the text of the Agreement.

# NOTES OF CASES

*The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.*

## Court of Appeal

### COSTS IN PROBATE ACTIONS: GUIDING PRINCIPLES

***In re* Cutcliffe's Estate; Le Duc *v.* Veness and Another**

Hodson, Morris and Ormerod, L.JJ. 11th November, 1958

Appeal from Collingwood, J., with leave against order as to costs.

The plaintiff, a blind widow, asked for probate of a will in her favour executed on 31st January, 1955, by a testator, her step-father, who died, aged eighty-four, three weeks later. The defendants, a father and daughter, executors and beneficiaries under a will executed by the testator in August, 1954, alleged that the execution of the will of January, 1955, was obtained by undue influence of the stepdaughter, and alternatively that it was made without the testator's knowledge and approval; and by a counter-claim they asked that probate be decreed for the will of August, 1954. The stepdaughter had lived with and looked after the testator until 1954, but left him after one of a series of quarrels and did not return to his house to live, though she visited him in hospital and at his home towards the end of his life. The defendants, who had been tenants of part of the testator's house since 1952, looked after him continuously after the stepdaughter left. The will in their favour was executed in the presence of a solicitor who had drawn it on the testator's instructions, and it was attested by him and by the testator's own doctor. On 19th January, 1955, the testator had an interview with the solicitor, asking for a reassurance that his will in favour of the defendants was in order, being under the impression that his "pestering relatives" had wanted him to sign a document which might be a will, and being unable to recall whether he had signed such a document or not. On 31st January, 1955, the stepdaughter and two ladies known to her and to the testator called on him with a prepared typewritten will in favour of the stepdaughter; and that will was executed by the testator in her presence and was attested by the two ladies. Two hours later the testator wrote out and signed a document as follows: "9 hrs. 25 mts. January 31, 1955. This is to certify that I . . . have not signed any document on the above date which I wish to be classified as valid and in accordance with my wishes." He died on 24th February, 1955. On the trial of the action, the judge held that the plea of undue influence failed, and expressly rejected as "invention" direct evidence on that issue given on behalf of the defendants. On the issue whether the testator knew and approved of the contents of the will, the judge held that the circumstances were such as to require the step-daughter to discharge the onus of showing the righteousness of the transaction, but that she had discharged that onus; and he pronounced for the will in her favour. On the order as to costs, the judge rejected the submission for the defendants that costs should be paid out of the estate on the ground that the litigation had been caused by the conduct of the testator, and ordered that the defendants should pay the costs of the action. The defendants appealed against the order as to costs.

HODSON, L.J., said that the principles on which the Probate Court exercised its discretion as to costs were set out in *Spiers* v. *English* [1907] P. 122 (cited, apparently with approval, in *Wild* v. *Plant* [1926] P. 139) as follows: "The two main principles which should guide the court in determining that costs in a probate suit are not to follow the event are, firstly, where the testator or those interested in the residue have been the cause of the litigation; and, secondly, if the circumstances lead reasonably to an investigation in regard to a propounded document. In this latter case the costs may be left to be borne by those who incurred them; in the former, the costs of unsuccessfully opposing probate may be ordered to be paid out of the estate. Neither of those principles . . . justifies a plea of undue influence unless there were reasonable grounds for putting it forward." So far as the first exception in *Spiers* v. *English* was concerned, his lordship did not think it could be said that this litigation was brought about by the fault of the testator. He could not subscribe to the view that because the testator gave a statement to the solicitor on 19th January and left behind him this rather remarkable document of 31st January, he was himself responsible for inviting litigation about his estate. While it would not be possible to limit the circumstances in which a testator might be said to have promoted litigation by leaving his own affairs in confusion, it should not extend to cases where a testator by his words, either written or spoken, had misled other people and perhaps inspired false hopes that they might benefit after his death. This litigation had not been brought about by the fault of the testator such as to entitle the unsuccessful party to have costs paid out of the estate; nor was the residuary legatee the cause of the litigation. On the issue of undue influence, his lordship would be slow to listen to a submission that people, who gave evidence which the trial judge thought to be wholly false, who had lost their case, and who had had the costs given against them, should be heard to say that an order for costs should be made either wholly or in part in their favour on the ground that the court, in exercising its discretion in probate actions, was in the habit of exercising it along certain lines. Anyone who had studied the history of litigation in the Probate Division, notwithstanding the exceptions in the books, must know that where pleas of undue influence and fraud were made, the probability was that if they were unsuccessfully made the people who made them and failed would be condemned in the costs not only of that charge but of the whole action. The evidence which the judge disbelieved here was directed not only to the question of want of knowledge and approval but also to that of undue influence. The defendants had wholly failed to prove undue influence because they were disbelieved, and it was inevitable that an order for costs should be made against them. The appeal should be dismissed.

MORRIS, L.J., delivered a concurring judgment.

ORMEROD, L.J., agreed.

APPEARANCES: *C. L. Hawser* (*Manches & Co.*); *Victor Williams* (*Francis Taylor & Fryzer*).

[Reported by Miss M. M. HILL, Barrister at-Law] **[3 W.L.R. 707**

## Chancery Division

### RATING: RELIEF: ZOOLOGICAL SOCIETY

***In re* North of England Zoological Society; North of England Zoological Society *v.* Chester Rural District Council**

Vaisey, J. 24th October, 1958

Adjourned summons.

The plaintiff society was incorporated on 9th May, 1934, as a company limited by guarantee. Clause 3 of the society's memorandum of association provided: "The objects of the society are: (*a*) To acquire and take over . . . and conduct as a scientific and educational undertaking the business heretofore carried on as the Chester Zoological Gardens" by another company. "(*b*) To promote, facilitate and encourage the study of biology, zoology and animal physiology . . . botany and horticulture and all kindred sciences and to foster and develop among the people an interest in and knowledge of animal life. (*c*) To establish, equip, and carry on and develop zoological parks or gardens and living zoological collections . . . (*d*) To establish sanctuaries for all kinds of wild life, particularly animal and bird sanctuaries . . ." Then followed a long list of other objects, including, *inter alia*, the building and provision of cafés, reading-rooms and other buildings for the convenience of visitors, the holding of public meetings, publishing books, raising funds, etc. The society carried on an organisation known as the Chester Zoo and owned and managed zoological gardens containing some 730 animals, birds and reptiles and cultivated tropical and other exotic vegetation. The gardens were visited annually by over 500,000 persons of whom 45,000 were schoolchildren. The principal source of its income was from admission fees. The society claimed to be entitled to the benefit of the provisions of s. 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, in respect of its zoological gardens and took out the summons to determine whether on the true construction of s. 8 (1) (*a*) of that Act it was an organisation which was not established or

conducted for profit, and whose main objects were charitable or were otherwise concerned with the advancement of religion, education or social welfare.

VAISEY, J., said that the expression " main objects " was nowhere defined. There were two kinds of " objects " in a document such as the society's memorandum of association—objects properly so-called as distinguished from objects which were not in fact objects so much as powers. Basing his decision on the conclusions of Lord Wrenbury in *Cotman* v. *Brougham* [1918] A.C. 514, at p. 523, his lordship thought that " main objects " in s. 8 (1) (*a*) of the Act of 1955 meant those objects which were really objects, excluding those objects so-called which were in fact nothing more or less than powers. In his lordship's judgment, the first three paras. (*a*) to (*c*) of cl. 3 of the memorandum of association gave the proper objects of the society, and the activities enumerated in the other paragraphs, with the possible exception of (*d*), were not really objects but ancillary powers to enable effect to be given to the main objects. They were not the objects—to take over and run a zoological garden and a park—for which the company was formed ; they were merely powers. His lordship referred to the decision in *In re Lopes* [1931] 2 Ch. 130 (that the Zoological Society of London was an educational charity), and said that although he was not holding that anything which called itself a zoo was necessarily charitable, there was no ground for distinguishing the Chester Zoo from the London Zoo. All the main objects which he had enumerated were charitable and they together constituted what s. 8 (1) (*a*) referred to as main objects. He need not consider whether those objects were otherwise concerned with the advancement of education once he had concluded that they were charitable, but it was clear that they were concerned with the advancement of education. The society was within the purview of the subsection. Declaration accordingly.

APPEARANCES : *H. I. Willis*, Q.C., and *J. F. Coplestone-Boughey* (*Field, Roscoe & Co.*, for *Ouseley-Smith & Co.*, Chester) ; *G. D. Squibb*, Q.C., *D. G. Widdicombe* and *Trustram Eve* (*Preston, Lane-Claypon & O'Kelly*, for *Gamon & Co.*, Chester).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 1258**

## LANDLORD AND TENANT: COVENANT NOT TO ASSIGN WITHOUT CONSENT: REFUSAL ON GROUNDS OF SUPERIOR LANDLORDS' REFUSAL

### Vienit, Ltd. *v.* W. Williams & Son (Bread Street), Ltd.

Wynn Parry, J. 24th October, 1958

Adjourned summons.

The plaintiffs were tenants of the defendants under a lease which contained a covenant not to assign, part with possession or underlet the demised premises " without the previous consent in writing of the lessors or their superior lessors which consent shall not be unreasonably withheld in the case of a respectable and responsible assignee or underlessee . . . " The plaintiffs were desirous of assigning the remainder of their term to a company of whom the uncontradicted evidence was that they were respectable and responsible assignees. The defendants stated that they were prepared to grant their consent provided that the superior lessors also consented ; the superior lessors, however, were only willing to give their consent on conditions which were plainly unacceptable to the plaintiffs. The plaintiffs, by this summons (to which the superior lessors were not made a party), asked for a declaration that on the true construction of the lease, and in the events which had happened (*a*) the failure and/or refusal of the defendants to consent to grant a licence to the plaintiffs to assign the said lease was unreasonable ; (*b*) the refusal of the superior lessors to consent to the said assignment except subject to certain conditions was unreasonable, and (*c*) that, notwithstanding such refusal as aforesaid, the plaintiffs were entitled to assign the said lease.

WYNN PARRY, J., said that the first point with which he had to deal was to consider whether or not the act of the superior lessors in refusing permission to the defendants to assign was reasonable or unreasonable. In his judgment, having regard to *In re Gibbs & Houlder Bros. & Co., Ltd.'s Lease* [1925] Ch. 575, such refusal was unreasonable. The provision in the plaintiffs' lease which he had to construe represented the contractual rights between them and the defendants. He thought that he was justified in dealing with the matter as between the two parties now before him. The principle that should be applied was whether the defendants' consent had been unreasonably withheld within the meaning of the clause in their lease. In those circumstances, were the defendants entitled to say, relying on the refusal of the superior lessors, that they, the defendants, were at peril if they gave their consent ? He thought not, because as he had held that the superior lessors were unreasonable, the continued refusal by the defendants to give their consent was in itself unreasonable. The plaintiffs were entitled to some relief, but he was not prepared to grant the second declaration asked for in the summons because it was not the practice of the court to grant a declaration in the absence of the party against whom the declaration was sought or to grant a declaration as to the conduct of a party not before it. It would be sufficient in the circumstances to make a declaration in the plaintiffs' favour in the form of the first declaration sought on the basis that he had shown that the refusal of the superior lessors to grant a licence constituted no excuse for the refusal of the defendants on their part to grant a licence.

APPEARANCES : *Leonard Lewis* (*Fletcher, Napper & Co.*) ; *Christopher Heath* (*Biddle, Thorne, Welsford & Barnes*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 1267**

## BANKRUPTCY: WITHDRAWAL OF PETITION ON DEBT BEING PAID

### *In re* Mann, a debtor ; *ex parte* the Debtor *v.* Harrods, Ltd.

Harman and Danckwerts, JJ. 24th November, 1958

Appeal from the registrar.

One of the creditors of a debtor presented a bankruptcy petition on 3rd July, 1958, based on an act of bankruptcy when execution had been levied against the debtor by seizure of his goods, which had been held by the sheriff for twenty-one days from 19th May, 1958. The debt was paid by a third party on 23rd July. When the petition came on for the first hearing before the registrar on 30th July, he refused leave to the creditor to withdraw the petition, but demanded evidence that there were no other creditors. The case was adjourned until 19th August, when some other creditors appeared, but as there was a possibility that all the debts would be paid the case was again adjourned. At a third hearing on 17th October, since the debts had not been paid the registrar made a receiving order on the ground that it was not in the general interest of the creditors that the petition should be dismissed. The debtor appealed against the receiving order.

HARMAN, J., said that the registrar made a receiving order on what he called " his discretion " ; but there was no petitioner with a debt before him and therefore he could not make such an order. On the other hand, he did not give any opportunity to the other creditors to apply to be substituted under s. 111 of the Bankrnptcy Act, 1914. The receiving order would be discharged and the cause remitted to the registrar to ascertain whether any of the creditors wished to be substituted, and he could then make an order either substituting a new petitioner or, having found nobody willing or able to sustain that role, give the petitioner leave to withdraw his petition, and the whole matter would be discharged. Receiving order discharged.

DANCKWERTS, J., agreed.

APPEARANCES : *D. A. Thomas* (*Cardew-Smith & Ross*) ; *B. L. A. O'Malley* (*McKenna & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 1272**

# Queen's Bench Division

## SHIPPING: CHARTERPARTY: VARIETY OF CARGOES: STRIKE AFFECTING ONE TYPE OF CARGO: EFFECT OF EXCEPTIONS CLAUSE

### South African Dispatch Line *v.* Owners of the Panamanian Steamship *Niki*

Diplock, J. 13th November, 1958

Special case stated by arbitrator.

A voyage charterparty provided for shipment in four districts in the Coos Bay/British Columbia range, loading rotation to be at the charterers' option, a cargo of lumber, timber, wheat in bulk and/or all lawful merchandise, excluding dangerous cargo.

It contained an exceptions clause providing ". . . Charterers shall not be responsible for any delay if the cargo intended for shipment under this charterparty cannot be provided, delivered, loaded or discharged by reason of . . . strikes . . ." On 13th June, 1952, the charterers booked a cargo of lumber at Victoria, British Columbia, but on 16th June a strike broke out which prevented the loading of lumber at all British Columbian ports. On 27th June, as the strike still continued, the charterers proposed to the owners the loading of an alternative cargo of wheat if it proved impossible to load the lumber because of the strike and, as the owners agreed, the ship, instead of calling at Victoria to load the lumber took on a further cargo of wheat at Vancouver, where she called first, and then sailed direct to Portland, Oregon, where she completed loading on 31st July. The parties agreed to submit to arbitration the issue whether the owners would have been allowed to count time lost at Victoria because of the strike as laytime if the vessel had loaded the intended cargo, and part of the freight, representing the extra cost involved in loading the alternative cargo, was held in escrow pending the arbitrator's decision. The arbitrator held that the charterers would have been protected by the exceptions clause from responsibility for delay in loading caused by the strike and made his award in their favour. The owners appealed.

DIPLOCK, J., said that the case depended on the construction of the exceptions clause which he had to construe in the light of four principles of law: the first, *prima facie* it was the duty of the charterer to have the cargo ready to load at the commencement of the laydays; secondly, in an exceptions clause providing for interruption of laydays by excepted perils, *prima facie* that related to excepted perils which affected the actual operations of loading; thirdly, where a charterparty permitted the loading of a number of different cargoes, the fact that the exceptions clause would excuse delay in loading one type of cargo did not excuse a failure to load an alternative type which was not affected by an excepted peril; fourthly, the clause did not excuse delay in loading for such time as was reasonably required for the charterers to obtain an alternative type of cargo. The decision of the House of Lords in *Bunge y Born Limitada Sociedad* v. *Brightman and Co.* [1925] A.C. 799 was authority for propositions 2 and 3 and that of the Court of Appeal in the same case ([1924] 2 K.B. 619) for the fourth. It seemed to him that, on the true construction of this clause, the delay excused was delay in the performance of the charterers' duties which was caused by the excepted perils, the relevant one here being the strike; but as it was the charterers' responsibility under this charterparty to provide any number of different cargoes, if they were unable to provide a particular one they were under a duty to provide another, and the only delay, which was in fact caused by a strike affecting only one of the cargoes which it was their duty to supply, was the length of time it took them to obtain an alternative cargo. They were entitled to a reasonable time in which to do so. As to the issue before the arbitrator, it was clear that, although the charterers would have been entitled to order the ship to Victoria, had they done so, in order to obtain the protection of the exceptions clause, they would have had to show that they had made attempts to obtain an alternative cargo, or applied their minds to the question whether the strike would end before that could be done. The question as put assumed that they would not have taken that course of action and therefore the owners were entitled to succeed.

APPEARANCES: *R. A. MacCrindle* (*Stokes & Mitcalfe*); *Michael Kerr* (*Botterell & Roche*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law] **[3 W.L.R. 718**

## Court of Criminal Appeal

### CRIMINAL LAW: NIGERIAN: SENTENCE: POWER TO BIND HIM OVER TO RETURN TO NIGERIA

**R. *v.* Ayu**

Lord Parker, C.J., Cassels and Diplock, JJ.

17th November, 1958

Appeal against sentence.

The appellant, a Nigerian, came to England in 1939. Since 1948 he had done no regular work and had some sixteen previous convictions. He was convicted of being found in a dwelling-house for an unlawful purpose and was committed to quarter sessions for sentence as an incorrigible rogue. The recorder sentenced him to twelve months imprisonment and ordered that at the end of his imprisonment he was bound over in his own recognizance in the sum of £10 to return to Nigeria and not to land in this country for five years thereafter.

LORD PARKER, C.J., said that if it were possible to make an order imposing a condition that the appellant went back to his own country, so much the better, but the question was whether there was any power to make such an order. It seemed clear that it was possible in the case of an order binding over a man to come up for judgment when called upon and that had been done in one or two cases and approved by this court, but the court knew of no case where such a condition could be inserted in a binding-over order under the Justices of the Peace Act, 1361. A form of order binding the appellant over to come up for judgment when called upon could not be made in the present case in addition to the twelve months imprisonment, and therefore the order had to be quashed.

APPEARANCES: *M. D. L. Worsley* (*Registrar of the Court of Criminal Appeal*); *C. J. T. Pensotti* (*Town Clerk*, Brighton).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] **[1 W.L.R. 1264**

# RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the "Points in Practice" Department, "The Solicitors' Journal," Oyez House, Breams Buildings, Fetter Lane, London, E.C.4, but the following points should be noted:

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

### Repairs—LIABILITY

*Q.* *L* is the landlord of an unfurnished dwelling-house, the rateable value of which is £30, and *T* is the tenant under an agreement dated 5th July, 1947. The relevant terms of the agreement are as follows: (1) *T* covenanted "to keep all the glass in the windows and all shutters, locks, fastenings, bells and other internal fixtures in, upon and belonging to the premises in good and sufficient repair during the tenancy and the same in good and sufficient repair to deliver up at the end thereof"; (2) *L* covenanted "The landlord further agrees to keep the main walls and roof of the said premises in good and tenantable repair and condition."

On 3rd June, 1958, *L* served on *T* notice of increase of rent under the Rent Act, 1957, increasing the rent by 7s. 6d. a week from 15th September, 1958, and by a further 3s. 2d. a week from 16th March, 1959. On 14th July, 1958, *T* served a notice of defects of repair listing the following defects: (1) *External structure:* (*a*) damp patch in outer wall of small bedroom; (*b*) putty broken away and requires renewing on all windows. (2) *Internal structure:* Back of dining-room fireplace badly cracked and falling-in—unable to repair. (3) *External decoration:* Requires repainting. (5) *Fixtures and fittings:* (*a*) New boiler required for hot water system; (*b*) sink waste pipe broken. (6) *Other defects of repair:* front

gates completely rotten—cannot further repair. Concrete path subsiding and badly cracked.

*L* contends that his liability for repairs is as defined by the 1947 agreement. *T* claims that under the Rent Act, 1957, *L* is bound to remedy all the defects listed in the notice. *L* has offered to give a written undertaking to repair item 1 (*a*) and without prejudice item 3. *L* has now received a notice dated 6th November, 1958, from the local authority of its proposal to issue a certificate of disrepair. If a certificate of disrepair issues, *L* wishes to apply to the county court for cancellation of the certificate on the grounds that except for item 1 (*a*) none of the defects should have been listed in the notice.

In view of the terms of the 1947 agreement: (1) Is *L* bound to do more than remedy item 1 (*a*)? (2) If *L* is so liable then is he liable to remedy all the defects? *L* is particularly concerned about item 5 (*a*), which is obviously costly. (3) Is the county court bound to have regard to the 1947 agreement in view of the Rent Act, 1957, Sched. I, Pt. II, para. 4 (4) and (5)? (4) If *L* is not liable to remedy defects other than 1 (*a*) can he prevent the local authority from issuing a certificate of disrepair or is his sole remedy to apply to the county court for cancellation after the certificate has issued?

*A*. We do not agree that *L's* liability for repairs is now limited to what is expressly provided for in the tenancy agreement. The data do not include the amount of the old rent or the factor (Sched. I, para. 1) adopted on serving the notice of increase on 14th July (which should have been "such number less than two but greater than four-thirds the 1956 gross value as may be agreed in writing," etc.); but in our opinion, once the notice takes effect, *T's* right to abatement depends first on whether there are defects and then on (i) whether the defects ought reasonably to be remedied, having due regard to the age, character and locality of the dwelling: Sched. I, para. 3; and (ii) whether the defects are defects for which the tenant is responsible: Sched. I, para. 4 (4) (to be referred to later), the tenant being entitled to a certificate once he complains of defects which ought reasonably to be remedied, the landlord being entitled to cancellation if, at all events, (ii) of the above conditions be not fulfilled: Sched. I, para. (5). Accordingly:—

(1) and (2). The vital consideration here is, in our opinion, the somewhat inadequate guidance afforded by Sched. I, para. 15, as to the defects for which the tenant is responsible. There are three classes: (*a*) those for the remedying of which, as between the landlord and the tenant, the tenant is responsible; (*b*) those due to any act, neglect, or default of the tenant or any person claiming under him; and (*c*) those due to any breach by the tenant or such person of any *express* agreement. We consider that Item 1 (*b*) is covered by *T's* express covenant. We do not consider that Items (2) and (5) (*b*) could be held to be defects for which the tenant is responsible in the absence of evidence of deliberate damage or gross carelessness; apart from the fact that there is *an* express covenant by *T* dealing with other matters the observations of Denning, L.J. (as he then was), in *Warren* v. *Keen* [1954] 1 Q.B. 15 ("little jobs about the premises which a reasonable tenant would do") are in point. Cancellation of Item 3 could be sought if the structure were not affected by the alleged disrepair (see *Crawford* v. *Newton* (1887), 2 T.L.R. 877), and an attempt could be made in the case of Item 5 on the ground that the boiler is an internal fixture covered by *T's* covenant. Support could be found for this proposition in *Mather* v. *Fraser* (1856), 2 K. & J. 536, and in *Jenkins* v. *Gething* (1862), 2 J. & H. 520; but though *T* himself calls the boiler (and incidentally, the waste pipe of Item 5 (*b*)) "fixtures and fittings," we apprehend that the attempt would fail on the court applying the *ejusdem generis* rule to the covenant ("shutters, locks, fastenings, bells . . ."). As to Item 6, both the "age, character and locality" test and the "neglect" test might be invoked.

(3) Yes, by virtue of para. 15, discussed above.

(4) Application to the court is, we consider, the sole remedy: para. 4 (4): "the local authority shall not be concerned, etc.," where the question is one of tenancy obligations or of neglect, etc.; where it is one of "age, character and locality" no remedy appears to be specified but we cannot suggest any method of preventing the issue of a certificate except by prohibition or certiorari proceedings.

**Decontrol**—Notice to Determine—Clerical Error in Date

*Q*. In December, 1957, a formal notice under the Rent Act, 1957 (Form S) was served on the tenant of premises of a rateable value of £45 on behalf of the landlords for whom we are acting. The notice was dated 2nd December, 1957, but unfortunately there is a mistake in the date on which the tenant is required to render up possession of the premises. The date is given as 6th October, 1957, instead of 1958. This is obviously a clerical mistake. It is pointed out, however, that a covering letter was sent to the tenant with the notice and this reads: "We enclose a notice under the Rent Restrictions Regulations, 1957, determining your tenancy on 6th October, 1958," and the tenant acknowledged the notice without commenting about the error in the date. The error in the date has only recently come to light. Do you consider that the error will invalidate the notice, and, if so, do you consider that it would be possible to make the notice valid if the tenant will agree to sign a letter to the effect that, notwithstanding the mistake in the date, he agrees that the date is an obvious clerical error and should have been given as 6th October, 1958, and he accepts the notice as a valid notice and that it should be read and construed as if the date had been given as 6th October, 1958?

*A*. In our opinion, the point would be decided by reference to authorities concerning mistakes in notices to quit, regard being had to the fact that Form S is a statutory notice which cannot be amended by the court: it is, we consider, doubtful whether the proposed letter would bring into operation the "acquiescence" principle of *Re Swanson* (1946), 62 T.L.R. 719, and *Wallis* v. *Semark* [1951] 2 T.L.R. 222. But, while the authorities cannot be completely reconciled, our view is that this is not a case in which the tenant "could light his pipe with it" (*Blackburn* v. *Evans* (1874), 29 L.T. 835), and that a court would apply the reasoning of those decisions in which it was held that where the mistake was obvious because the date of expiry was on the face of it impossible, and the tenant could not have been misled, the desired effect will be given. These include: *Doe d. Bedford* (*Duke of*) v. *Kightley* (1796), 7 T.R. 63, and *Wride* v. *Dyer* [1900] 1 Q.B. 23.

## LAW SOCIETY YACHT CLUB

At the Annual General Meeting held at The Law Society's Hall, Chancery Lane, on Tuesday, 18th November, 1958, the following Officers were elected: Commodore—Sir Ernest S. Harston, C.B.E.; Vice-Commodore—Mr. P. F. Carter-Ruck; Rear-Commodore—Mr. C. K. Cullen; Hon. Treasurer—Mr. J. Holt; Hon. Secretary—Mr. G. D. Caldwell, 13 Old Square, Lincoln's Inn, W.C.2. Sir Thomas and Lady Lund were the principal guests of honour at the dinner which was held in the Common Room and was attended by some fifty-two members and guests. The Commodore presented the Digniora Cup to Mr. P. F. Carter-Ruck for his ocean racing successes and his cruise to the Baltic during the past season. The Commodore and Lady Harston also presented a new cup to the club for the best effort in dinghy or keel-boat racing. This cup will be known as the Amokura Cup after the Commodore's famous yacht of that name and this year the cup has been awarded to Mr. O. C. Somerville-Jones for his successful record in his 12-foot National. After dinner, the Vice-Commodore showed some more of his excellent colour films taken on board his yacht in the North Sea and Scandinavian waters.

# BOOKS RECEIVED

**" The Motor " Guide to the Law.** By a BARRISTER-AT-LAW. With decorations by Wren. pp. xi and (with Index) 115. 1958. London: Temple Press, Ltd. 10s. 6d. net.

**Reports of Restrictive Practices Cases.** Volume I—Parts 1 and 2. Edited by R. P. COLINVAUX, Barrister-at-Law. pp. 114. 1958. London: The Incorporated Council of Law Reporting for England and Wales. Complete Volume £8 8s. net.

**Prideaux's Forms and Precedents in Conveyancing.** Twenty-fifth Edition in three Volumes. Volume 1. Edited by T. K. WIGAN, Barrister-at-Law, and I. M. PHILLIPS, Barrister-at-Law. pp. lxiv and (with Index) 941. 1958. London: Stevens and Sons, Ltd., and The Solicitors' Law Stationery Society, Ltd. £6 6s. net.

**The Law and Practice of Registered Conveyancing.** By Sir GEORGE H. CURTIS, C.B., of Gray's Inn, Barrister-at-Law, Chief Land Registrar of H.M. Land Registry, and THEODORE B. F. RUOFF, Solicitor, Senior Registrar of H.M. Land Registry. pp. lxiii and (with Index) 1186. 1958. London: Stevens & Sons, Ltd. £6 6s. net.

**Potter's Outlines of English Legal History.** Fifth Edition. By A. K. R. KIRALFY, Ph.D., LL.M., of Gray's Inn, Barrister-at-Law. pp. xvi and (with Index) 285. 1958. London: Sweet & Maxwell, Ltd. £1 5s. net.

**Introduction to Shipping Law.** By RONALD BARTLE, B.A. (Cantab.), of Lincoln's Inn, Barrister-at-Law. With a Foreword by EUSTACE ROSKILL, Q.C. pp. xv and (with Index) 232. 1958. London: Sweet & Maxwell, Ltd. £1 10s. net.

**The Taxation of Gifts and Settlements including Pension Provisions.** Third Edition. By G. S. A. WHEATCROFT, J.P., M.A. (Oxon), a Master of the Supreme Court (Chancery Division), assisted by MICHAEL FRANKS, M.A. (Oxon), of Gray's Inn, Barrister-at-Law. With a Foreword by Sir IAN YEAMAN. pp. xxxviii and (with Index) 249. 1958. London: Sir Isaac Pitman & Sons, Ltd. £2 12s. net.

**Outlines of Industrial Law.** Third Edition. By W. MANSFIELD COOPER, LL.M., of Gray's Inn, Barrister-at-Law, and JOHN C. WOOD, LL.M., of Gray's Inn, Barrister-at-Law. pp. lxvi and (with Index) 434. 1958. London: Butterworth & Co. (Publishers), Ltd. £1 15s. net.

**A Guide to Defamation Practice.** Second Edition. By COLIN DUNCAN, of the Inner Temple, Barrister-at-Law, and A. T. HOOLAHAN, of the Inner Temple, Barrister-at-Law. With a Foreword by the late Sir VALENTINE HOLMES, Q.C. pp. xx and (with Index) 94. 1958. London: Sweet & Maxwell, Ltd. 15s. net.

**Bibliography of Rural Land Economy and Land-ownership, 1900–1957.** By D. R. DENMAN, J. F. SWITZER and O. H. M. SAWYER. pp. (with index) 412. 1958. Cambridge: Department of Estate Management: Cambridge University. £1 15s. net.

**Butterworths' Costs.** Sixth Cumulative Supplement. Edited by B. P. TREAGUS, Principal Clerk, Supreme Court Taxing Office, and H. J. C. RAINBIRD, of the Supreme Court Taxing Office. pp. xxx and 522. 1958. London: Butterworth & Co. (Publishers), Ltd. £1 15s. net.

# REVIEWS

**A Guide to Land Registry Practice.** Eighth Edition. By JOHN J. WONTNER. 1958. London: The Solicitors' Law Stationery Society, Ltd. £1 3s. 6d. net.

To welcome a new edition of a well-established practice book is always a pleasant task for the reviewer, but it is not so easy to find anything useful to say. The book is well known to the profession, and this new edition worthily maintains the standard set by the author as long ago as 1928 when the first edition appeared, in being a true guide to practice. As such it is readable—perhaps more so by reason of the re-writing that the author has undertaken—and readily followed in daily use. As in previous editions, Mr. Wontner does not hesitate to give advice as well as information, but he has not fallen into the error of overloading a practical handbook with references and obscure points. At times his statements may seem a trifle dogmatic (see, e.g., the final sentence on p. 19), and on doubtful matters the learned author seems to express the Registry view in preference to any other, but we cannot really quarrel with him on this score, in view of the title to the book. Those conveyancers who fail to buy this new edition will be indulging in a false sense of economy.

**Notes on District Registry Practice and Procedure.** Eleventh Edition. By THOMAS STANWORTH HUMPHREYS. 1958. London: The Solicitors' Law Stationery Society, Ltd. 15s. net.

The inherent vice in a complex system of rules for securing procedural fair play is that it breeds explanatory works; and an endemic disease affecting many such works is a kind of fatty degeneration which spreads as the rules themselves strive for even greater fairness. Editorial surgery is plied valiantly but unavailingly. Then there comes on the scene a new doctor in the person of Mr. Humphreys with the self-appointed task, not of curing the patient, but of showing its friends how to live with it.

For his labours in keeping up to date his very useful collection of notes, a sort of go-between in dealings with the White Book, the solicitors' profession will ever be grateful to Mr. Humphreys. The changes in practice which have occurred in the eighteen months since the publication of the tenth edition touch District Registry practice at several points, and all are incorporated in the new text. Many of them relate to fees and costs; equally important are the new requirements on setting down an action for trial. The author summarises the new material in a useful prefatory note, but readers should not take undue alarm at the mention of a Crown Proceedings Act in 1957. That this is the only blemish we have been able to find in the typesetting is a fact which is well able to speak for itself.

We are sure that this little guide will continue to enjoy the success it deserves.

**The Complete Guide to the Rent Acts.** By LIONEL A. BLUNDELL, LL.M., of Gray's Inn, Barrister-at-Law, and V. G. WELLINGS, M.A. (Oxon), of Gray's Inn, Barrister-at-Law. 1958. London: Sweet & Maxwell, Ltd. £2 2s.

To those unfamiliar with the subject, so ambitious a title would be hard to justify; those with experience of rent control legislation will not be disappointed at finding, as early as on p. 6, a statement commencing with " There is a lack of authority on the question . . ." Indeed, so far from being disappointed, they will be happy to find a truly comprehensive and well arranged text-book covering all the rent control legislation now in force, telling them what it does and what it does not do, and referring them to the authorities in point. The reference to authorities is, if anything, overdone; a point discussed by reference to a county court decision on p. 232 seems rather too academic for a work of this kind. Better too much than too little, however, if the Guide is to be comprehensive; and one is glad to find, for instance, the subtle differences between kitchens and kitchenettes succinctly dealt with in this way in connection with " sharing arrangements," on p. 16. Another useful feature deserving of mention is the illustration of Rent Act, 1957, decontrol by examples (pp. 24–26), and the same applies to the very full exposition of the vexed subject of certificates of disrepair under that Act (Chap. V). And all that can be said about the Landlord and Tenant (Temporary Provisions) Act, 1958, is very clearly set out in a chapter, Chap. XIV, devoted to " Court Proceedings."

# IN WESTMINSTER AND WHITEHALL

## HOUSE OF LORDS

### A. Progress of Bills

Read Second Time:—

**Armed Forces (Housing Loans) Bill [H.C.]** [4th December.

Church of Scotland Trust Order Confirmation Bill [H.C.] [3rd December.

**Development of Inventions Bill [H.C.]** [4th December.

North of Scotland Electricity Order Confirmation Bill [H.C.] [4th December.

Read Third Time:—

**Manoeuvres Bill [H.L.]** [4th December.

**Slaughter of Animals Bill [H.L.]** [4th December.

In Committee:—

**Deer (Scotland) Bill [H.L.]** [4th December.

**Nuclear Installations (Licensing and Insurance) Bill [H.L.]** [2nd December.

### B. Questions

#### Council on Tribunals

The Lord Chancellor announced the membership of the Council on Tribunals, set up under the Tribunals and Inquiries Act, 1958, s. 1, to keep under review, and report upon, the constitution and working of administrative tribunals and also of those administrative procedures which involve or may involve the holding of a statutory inquiry by or on behalf of a Minister of the Crown.

Chairman: Lord Reading. Members: Sir Hugh Rose, Bt., T.D., The Hon. R. E. B. Beaumont, T.D., Mr. David B. Bogle, W.S., Sir Herbert Brittain, K.C.B., K.B.E., Mr. Harold Collison, Lord Cranbrook, C.B.E., Miss Vera Dart, O.B.E., Mr. E. Milner Holland, C.B.E., Q.C., Major-General Sir Aymer Maxwell, C.B.E., M.C., Mr. H. Wentworth Pritchard, Viscountess Ridley, O.B.E., Lord Strathalmond, C.B.E., Mr. H. W. R. Wade. Secretary: Mr. Alastair Macdonald, at present of the Law Officers' Department.

The chairman of the Scottish Committee would be Sir Hugh Rose and the members would include Sir Aymer Maxwell, Mr. Bogle, Mr. W. P. McGinniss, O.B.E., Mr. J. P. Morrison, O.B.E., Mr. I. H. Shearer, Q.C., and one other member still to be appointed. Secretary: Mr. I. M. Wilson, of the Scottish Home Department. [3rd December.

## HOUSE OF COMMONS

### A. Progress of Bills

Read First Time:—

**House Purchase and Housing Bill [H.C.]** [1st December.

To authorise Exchequer advances to, and the deposit of trust funds with, approved building societies; to increase the amounts which local authorities are authorised to advance under the Small Dwellings Acquisition Acts, 1899 to 1923, the Small Dwellings Acquisition (Scotland) Acts, 1899 to 1923, s. 43 of the Housing (Financial Provisions) Act, 1958, and s. 75 of the Housing (Scotland) Act, 1950; to make further provision for grants by local authorities and Exchequer contributions to local authorities towards the improvement of dwellings; to amend the provisions of the said Act of 1958 and the said Act of 1950, with respect to Exchequer contributions and grants by local authorities towards the provision of dwellings by the conversion of house and other buildings and towards the improvement of dwellings, and with respect to the conditions to be observed where assistance has been given under Pt. II of the said Act of 1958 or Pt. VII of the said Act of 1950; and for purposes connected with the matters aforesaid.

**Transport (Borrowing Powers) Bill [H.C.]** [1st December.

To increase the limits imposed by para. (*b*) of subs. (1) of s. 26 of the Transport Act, 1953, and by subs. (4) of s. 1 of the Transport (Railway Finances) Act, 1957, on the borrowing powers of the British Transport Commission.

Read Second Time:—

**New Towns Bill [H.C.]** [1st December.

Read Third Time:—

Society in Scotland for Propagating Christian Knowledge Order Confirmation Bill [H.C.] [4th December.

### B. Questions

#### Bankruptcy Law Amendment Committee

Mr. J. Rodgers said that the report of the Bankruptcy Law Amendment Committee was still under consideration. He could see little prospect of early legislation. [2nd December.

#### Statements by Accused Persons

Mr. R. A. Butler declined to introduce legislation to make inadmissible in evidence statements prejudicial to an accused person alleged to have been made in writing by him to the police otherwise than in the presence of a magistrate. In his view the Judges' Rules, supplemented by the recommendations circulated to the police in 1947 and 1948 with the approval of the then Lord Chief Justice, contained adequate safeguards for the accused. If the procedure had not been observed in a particular case it was open to the defence to challenge the statement and it was for the court to consider whether it was admissible. [4th December.

#### Jury Service

Replying to Sir F. Medlicott, Mr. Renton said that legislation, of which he could hold out no prospect in the near future, would be required to raise the age limit for jury service so that more retired men and women would serve. [4th December.

#### Public Trustee Office

The Attorney-General said that the Lord Chancellor was satisfied of the adequacy of the present arrangements by which the Public Trustee had one office, which was in London. [4th December.

## STATUTORY INSTRUMENTS

**Attendance Centre Rules,** 1958. (S.I. 1958 No. 1990.) 5d.

**Export of Goods** (Control) (Amendment No. 4) Order, 1958. (S.I. 1958 No. 1937.) 6d.

**Foreign Compensation Commission** (Amendment) Rules, Approval Instrument, 1958. (S.I. 1958 No. 1995.) 5d.

**Fylde Area** (Conservation of Water) Order, 1958. (S.I. 1958 No. 1985.) 5d.

*Draft* **Holyrood Park** Regulations, 1958. 5d.

**Import Duty Reliefs** (Administration) Order, 1958. (S.I. 1958 No. 1965.) 5d.

Import Duty Reliefs (No. 1) Order, 1958. (S.I. 1958 No. 1973.) 5d.

Import Duty Reliefs (No. 2) Order, 1958. (S.I. 1958 No. 1974.) 4d.

Import Duty Reliefs (No. 3) Order, 1958. (S.I. 1958 No. 1975.) 5d.

Import Duty Reliefs (No. 4) Order, 1958. (S.I. 1958 No. 1976.) 5d.

Import Duty Reliefs (No. 5) Order, 1958. (S.I. 1958 No. 1977.) 5d.

Import Duty Reliefs (No. 6) Order, 1958. (S.I. 1958 No. 1978.) 4d.

Import Duty Reliefs (No. 7) Order, 1958. (S.I. 1958 No. 1979.) 4d.

Import Duty Reliefs (No. 8) Order, 1958. (S.I. 1958 No. 1980.) 5d.

Import Duty Reliefs (No. 9) Order, 1958. (S.I. 1958 No. 1981.) 4d.

**Lincoln** (Amendment of Local Enactment) Order, 1958. (S.I. 1958 No. 1987.) 4d.

*Draft* **Linlithgow Peel** Regulations, 1958. 5d.

**London Traffic** (Prescribed Routes) (Harrow) Regulations, 1958. (S.I. 1958 No. 2001.) 4d.

London Traffic (Prescribed Routes) (Paddington) (No. 3) Regulations, 1958. (S.I. 1958 No. 2002.) 4d.

**Magistrates' Courts** (Attendance Centre) Rules, 1958. (S.I. 1958 No. 1991 (L. 13).) 6d.

**Malvern Hills** (Amendment of Local Enactment) Order, 1958. (S.I. 1958 No. 1986.) 5d.

**Police** (Scotland) Amendment Regulations, 1958. (S.I. 1958 No. 2009 (S. 109).) 5d.

**Preston By-Pass Motorway** Traffic Regulations, 1958. (S.I. 1958 No. 1983.) 6d.

*Draft* **Royal Botanic Garden and Arboretum,** Edinburgh, Regulations, 1958. 5d.

**Safeguarding of Industries** (Exemptions) (No. 7) Order, 1958. (S.I. 1958 No. 1972.) 5d.

**Slaughter of Pigs** (Anaesthesia) Regulations, 1958. (S.I. 1958 No. 1971.) 5d.

**Stopping Up of Highways** (City and County Borough of Bradford) (No. 5) Order, 1958. (S.I. 1958 No. 1982.) 5d.

Stopping Up of Highways (City and County of Bristol) (No. 6) Order, 1958. (S.I. 1958 No. 1949.) 5d.

Stopping Up of Highways (County of Cumberland) (No. 1) Order, 1958. (S.I. 1958 No. 1964.) 4d.

Stopping Up of Highways (County of Hertford) (No. 15) Order, 1958. (S.I. 1958 No. 1943.) 5d.

Stopping Up of Highways (County of Lancaster) (No. 37) Order, 1958. (S.I. 1958 No. 1994.) 5d.

Stopping Up of Highways (County of Lincoln, Parts of Lindsey) (No. 5) Order, 1958. (S.I. 1958 No. 1944.) 5d.

Stopping Up of Highways (London) (No. 50) Order, 1958. (S.I. 1958 No. 1947.) 5d.

Stopping Up of Highways (County Borough of Northampton) (No. 3) Order, 1958. (S.I. 1958 No. 1992.) 5d.

Stopping Up of Highways (County of Northampton) (No. 12) Order, 1958. (S.I. 1958 No. 1993.) 5d.

Stopping Up of Highways (County of Stafford) (No. 16) Order, 1958. (S.I. 1958 No. 1945.) 5d.

Stopping Up of Highways (County of Stafford) (No. 17) Order, 1958. (S.I. 1958 No. 1946.) 5d.

Stopping Up of Highways (County of Surrey) (No. 9) Order, 1958. (S.I. 1958 No. 1948.) 5d.

Stopping Up of Highways (County of Sussex, West) (No. 4) Order, 1958. (S.I. 1958 No. 1950.) 5d.

**Sunday Baking and Sausage Making** (Christmas and New Year) Order, 1958. (S.I. 1958 No. 1989.) 5d.

**Trunk Road** (Samlesbury, near Preston Link Roads) (Traffic Regulation) Order, 1958. (S.I. 1958 No. 1984.) 5d.

**Tuberculosis** (Attested Herds) (Scotland) Scheme, 1958. (S.I. 1958 No. 1967 (S. 108).) 8d.

## "THE SOLICITORS' JOURNAL," 11th DECEMBER, 1858

On the 11th December, 1858, the Solicitors' Journal vigorously attacked Mr. Baron Watson for some criticisms of an attorney at the Newcastle Assizes: " It seems strange that one who has the training of a lawyer and the habits of a gentleman, and who is charged to maintain the dignity of the judicial Bench, should, in his most unguarded moment, even at a remote assize, and in the presence of a scanty Bar, and in an atmosphere which seems to excite intemperance in judges, be capable of what we feel . . . compelled to designate as a violent and . . . unjustifiable attack upon a respectable practitioner . . . Every now and then some incident of the courts reveals the depths of the judicial mind and shows us that it is utterly deficient in the conception of an attorney as an intelligent and sensitive human being who . . . is not . . . altogether dead to the dictates of honesty or to the censures of society and of his own conscience upon his conduct. We fear the truth must be that the most humane and upright judges are sometimes liable to fits of uncontrolled rage and lawlessness. Either a personally disagreeable counsel is snubbed and silenced, or the reputation of an attorney who happens unluckily to be in the way is blasted, or an acquittal is forced in defiance of the clearest evidence, or a hapless prisoner receives a sentence proportioned, not to his crime, but to the passing irritability of the judge's nerves. These things have happened and will happen whenever erring mortals are trusted with large unfettered powers. The evil cannot be eradicated, but much may be done by publicity and free discussion to keep it within moderate bounds."

# NOTES AND NEWS

### Miscellaneous

### NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

The following notices of the preparation of maps and statements under the above Act, or of modifications to maps and statements already prepared, have appeared since the tables given in previous volumes and at pp. 312 and 514, *ante* :—

Draft Maps and Statements

| Surveying Authority | Districts covered | Date of notice | Last date for receipt of representations or objections |
|---|---|---|---|
| Huntingdon County Council | Area of council: modification to draft map and statement of 14th December, 1953 | 31st July, 1958 | 31st August, 1958 |
| Norfolk County Council | Loddon, Mitford and Launditch and St. Faith's and Aylsham Rural Districts | 11th July, 1958 | 11th November, 1958 |
| West Riding of Yorkshire County Council | Boroughs of Batley, Brighouse, Morley, Spenborough, and Todmorden; the Colne Valley, Denholme, Elland, Hebden Royd, Heckmondwike, Holmfirth, Kirkburton, Meltham, Mirfield, Ripponden, Saddleworth, Sowerby Bridge and Queensbury and Shelf Urban Districts; Hepton Rural District; modification to draft map and statement of 23rd January, 1953 | 28th July, 1958 | 7th September, 1958 |

Definitive Maps and Statements

| Surveying Authority | Districts covered | Date of notice | Last date for applications to the High Court |
|---|---|---|---|
| Barrow-in-Furness County Council | Area of council .. .. .. | 15th August, 1958 | 26th September, 1958 |
| Canterbury City Council | Area of council: modification to definitive map and statement of 16th April, 1958 | 5th August, 1958 | 1st January, 1959 |
| Middlesex County Council | Area of council .. .. .. | 10th July, 1958 | 22nd August, 1958 |
| Salop County Council | Boroughs of Oswestry and Wenlock; Dawley, Ellesmere, Market Drayton, Newport, Oakengates, Wellington, Wem and Whitchurch Urban Districts; Drayton, Ellesmere, Oswestry, Shifnal, Wellington and Wem Rural Districts | 18th July, 1958 | 30th August, 1958 |
| Somerset County Council | Dulverton Rural District .. | 15th August, 1958 | 26th September, 1958 |
| | Shepton Mallet Urban and Rural Districts | 28th July, 1958 | 9th September, 1958 |
| Surrey County Council | Area of council .. .. .. | 28th August, 1958 | 10th October, 1958 |
| West Suffolk County Council | Borough of Sudbury; Cosford, Melford, Thedwastre and Thingoe Rural Districts | 11th July, 1958 | 22nd August, 1958 |

In addition to the above, the County Council of the County of Southampton gave notice dated June, 1958, of the preparation of a revised map and statement, in respect of which representations or objections had to be received by 22nd November, 1958.